

No. 11049

IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

UNITED STATES OF AMERICA,

Appellant,

vs.

HOOPER C. DUNBAR, GORDON B. MORRIS and  
CRAIG C. HORTON, Trustees of Bell View Oil  
Syndicate, a trust,

Appellees.

---

**TRANSCRIPT OF RECORD**

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

---

FILED

AUG 24 1945

PAUL P. O'BRIEN,  
CLERK



No. 11049

IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

---

UNITED STATES OF AMERICA,

Appellant,

vs.

HOOPER C. DUNBAR, GORDON B. MORRIS and  
CRAIG C. HORTON, Trustees of Bell View Oil  
Syndicate, a trust,

Appellees.

---

**TRANSCRIPT OF RECORD**

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

---

## Exhibits:

Plaintiff's No. 1. Letter From Treasury Department to Bell View Oil Syndicate, Dated July 12, 1943 .....	56
Plaintiff's No. 4. Cancelled Check for \$1,500.00 Payable to C. C. Horton.....	60
Plaintiff's No. 5. Certified Copy of "Amended" Annual Return, Treasury Form 940 With Rider Attached for Year 1936.....	61
United States' No. A. 1939 and Excess Profits Tax Return of Bell View Oil Syndicate.....	64
Findings of Fact and Conclusions of Law.....	67
Judgment .....	73
Judgment, Amended .....	75
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	78
Order Extending Time to Docket Cause on Appeal.....	83
Statement of Points on Appeal.....	79
Statement of Testimony.....	50
Stipulation for Amended Judgment.....	77
Stipulation of Facts.....	30
Exhibits A to D are included by reference and are the same as those attached to the Complaint above.	
Exhibit E. Declaration of Trust.....	36
Statement of Points Relied Upon on Appeal (Circuit Court) .....	85

## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

CHARLES H. CARR,

United States Attorney,

E. H. MITCHELL,

Assistant U. S. Attorney,

GEORGE M. BRYANT,

Assistant U. S. Attorney,

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue,

600 U. S. Post Office and Court House Bldg.,

Los Angeles 12, Calif.

For Appellee:

MACKAY, MCGREGOR AND REYNOLDS,

728 Pacific Mutual Bldg.,

Los Angeles 14, Calif. [1\*]

United States District Court  
Southern District of California

Central Division

Civil Action No. 3259-PH

HOOPER C. DUNBAR, GORDON B. MORRIS, and  
CRAIG C. HORTON, Trustees of Bell View Oil Syn-  
dicate, a Trust,

Plaintiffs,

**vs.**

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR RECOVERY OF TAXES PAID

The plaintiffs for a first cause of action complain of the defendant and respectfully allege:

**I.**

That at all times hereinafter mentioned the defendant was and now is a sovereign body politic, that the plaintiffs, Hooper C. Dunbar, Gordon B. Morris and Craig C. Horton were and now are the trustees of Bell View Oil Syndicate a trust, (hereinafter called the Trust) organized and existing under and by virtue of a certain written declaration of trust, dated January 20, 1922, as amended by a written declaration, dated September 10, 1925. All of said trustees are citizens of the United States and residents of and domiciled in the County of Los Angeles, State of California, within the Sixth Internal Revenue Collection District of the State of California, and at all times hereinafter mentioned maintained and now maintain offices of said trust in the City of Los Angeles, County of Los Angeles, State of California.

II.

[2]

That on or about November 7, 1940, December 16, 1940 and February 10, 1941, at the times of the collection from the plaintiffs and payment to the defendant of the taxes herein mentioned, Nat Rogan was the Collector of Internal Revenue in and for the Sixth Collection District of the State of California; that said Nat Rogan is not in office as such collector at the time of the commencement of this action.

III.

That no action upon the claims herein referred to other than as herein set forth, has been taken before the Congress or any of the departments of the Government of the United States, or in any court; that no assignment or transfer of said claim has been made; that plaintiffs are entitled to the amount herein claimed from the defendant and there is no just credit or offset against said claim which is known to plaintiffs.

IV.

Plaintiffs duly filed under the name of Bell View Oil Syndicate an original return on Form 940, for the year 1936 on or before January 31, 1937, for federal social security and unemployment taxes and paid the tax thereon in the sum of \$60.03.

V.

The Commissioner of Internal Revenue as a result of an examination of plaintiff's return, thereafter erroneously and illegally determined a deficiency in the amount of \$474.00, together with interest and penalty, as a result of his ruling that Craig C. Horton, Hooper C. Dunbar, and Gordon B. Morris, trustees of the Trust, were employees thereof, whose remunerations were subject to the provisions of Title IX of the Social Security Act

(hereinafter referred to as the Act), Chapter 531, Stat. 620-648, 42 U.S.C.A. Secs. 301-1305.

## VI.

The said amount of \$474.00, together with interest and penalty in the sum of \$131.40, was thereafter assessed. Plaintiffs thereupon filed an amended return and on or about November 8, 1940, paid the sum of \$47.40 as shown thereon, the foregoing sum resulting from the credit allowed and taken for the amount paid to the State of California on or about November [3] 7, 1940 in the sum of \$639.90. On or about December 16, 1940, plaintiffs paid the further sum of \$13.08, representing interest and penalty upon the additional taxes thus assessed.

## VII.

On the 22nd day of September, 1942, the plaintiffs filed a claim for refund of said additional taxes together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title IX of the Act. A copy of the claim is attached hereto as Exhibit "A". The said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943.

## VIII.

That by reason of the facts hereinabove alleged, plaintiffs have been illegally and erroneously required to pay the additional taxes, together with interest and penalties, in the sum of \$60.48. That the said sum has not been refunded to the plaintiffs and the whole amount thereof, together with interest thereon is now due and owing.

Wherefore, plaintiffs pray for judgment against the defendant in the sum of \$60.48, together with interest thereon as provided by law, and for such other and further relief as the court may deem just and proper in the premises.



Plaintiffs for a second cause of action complain of the defendant and respectfully allege:

**I.**

Plaintiffs repeat and incorporate by reference paragraphs I, II and III hereinabove set forth in the first cause of action, with the same force and effect as if herein alleged and set out at length.

**II.**

Plaintiffs duly filed under the name of Bell View Oil Syndicate original return on or before January 31, 1938, on Treasury Form 940 for the year 1937 for social security and unemployment taxes and paid the tax thereon in the sum of \$70.69. [4]

**III.**

The Commissioner of Internal Revenue as a result of an examination of plaintiff's return thereafter erroneously and illegally determined a deficiency as a result of his ruling that Craig C. Horton, Hooper C. Dunbar and Gordon B. Morris, trustees of the Trust, were employees thereof, whose remunerations were subject to the provisions of Title IX of the Act in the amount of \$618.00, together with interest and penalties.

**IV.**

The said amount of \$618.00, together with interest and penalties in the sum of \$138.74, was thereafter assessed. Plaintiffs thereupon filed an amended return and on or about November 8, 1940 paid the sum of \$61.80, as shown on the amended return, the foregoing sum resulting from the credit allowed and taken for the amount paid to the State of California on or about November 7, 1940 in the sum of \$834.34. On or about December 16, 1940, plaintiffs paid the further sum of \$3.79, representing interest and penalty upon the additional taxes thus assessed.

## V.

On the 22nd day of September, 1942, the plaintiffs filed a claim for refund of said additional taxes, together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title IX of the Act. A copy of the claim is attached hereto as Exhibit "B". The said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943.

## VI.

That by reason of the facts hereinabove alleged, plaintiffs have been illegally and erroneously required to pay the additional taxes, together with interest and penalties, in the sum of \$65.59. That the said sum has not been refunded to the plaintiffs and the whole amount thereof, together with interest thereon is now due and owing.

Wherefore, plaintiffs pray for judgment against the defendant in the sum of \$65.59, together with interest thereon as provided by law, and for such other and further relief as the court may deem just and proper in [5] the premises.

Plaintiffs for a third cause of action complain of the defendant and respectfully allege:

## I.

Plaintiffs repeat and incorporate by reference paragraphs I, II and III hereinabove set forth in the first cause of action, with the same force and effect as if herein alleged and set out at length.

## II.

Plaintiffs duly filed under the name of Bell View Oil Syndicate original return on or before January 31, 1939 for social security and *employment* taxes and paid the tax thereon in the sum of \$96.13, for the year 1938.

### III.

The Commissioner of Internal Revenue as a result of an examination of plaintiff's return, thereafter erroneously and illegally determined a deficiency in the amount of \$415.50, together with interest and penalty, as a result of his ruling that Craig C. Horton, Hooper C. Dunbar, and Gordon B. Morris, trustees of the Trust, were employees thereof, whose remunerations were subject to the provisions of Title IX of the Social Security Act (hereinafter referred to as the Act), Chapter 531, Stat. 620-648, 42 U.S.C.A. Secs. 301-1305.

### IV.

The said amount of \$415.50, together with interest and penalty in the sum of \$68.08, was thereafter assessed. Plaintiffs thereupon filed an amended return and on or about November 8, 1940 paid the sum of \$41.55, as shown on the amended return, the foregoing sum resulting from the credit allowed and taken for the amount paid to the State of California on or about November 7, 1940 in the sum of \$512.45. On or about December 16, 1940, plaintiffs paid the further sum of \$6.65, representing interest and penalty upon the additional tax thus assessed.

### V.

On the 22nd day of September, 1942, the plaintiffs filed a claim [6] for refund of said additional taxes, together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title IX of the Act. A copy of the claim is attached hereto as Exhibit "C". The said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943.

### VI.

That by reason of the facts hereinabove alleged, plaintiffs have been illegally and erroneously required to pay the additional taxes, together with interest and penalties,

in the sum of \$48.20. That said sum has not been refunded to the plaintiffs and the whole amount thereof, together with interest thereon is now due and owing.

Wherefore, plaintiffs pray for judgment against the defendant in the sum of \$48.20, together with interest thereon as provided by law, and for such other and further relief as the court may deem just and proper in the premises.

Plaintiffs for a fourth cause of action complain of the defendant and respectfully allege:

### I.

Plaintiffs repeat and incorporate by reference paragraphs I, II and III hereinabove set forth in the first cause of action, with the same force and effect as if herein alleged and set out at length.

### II.

Plaintiffs duly filed under the name of Bell View Oil Syndicate original return on or before January 31, 1940, on Form 940 for the year 1939 for social security and unemployment taxes and paid the tax thereon in the sum of \$89.11.

### III.

The Commissioner of Internal Revenue caused a ruling to be issued that Craig C. Horton, Hooper C. Dunbar and Gordon B. Morris, trustees of the Trust, were employees thereof whose remunerations were subject to the provisions of Title IX of the Social Security Act (hereinafter referred to as the [7] Act), Chapter 531, 49 Stat. 620-648, 42 U.S.C.A. Secs. 301-1305.

### IV.

Plaintiffs thereupon on or about November 8, 1940, filed an amended return and paid the sum of \$28.80, as

shown thereon, the foregoing sum resulting from the credit allowed and taken for the amount paid to the State of California on or about November 7, 1940. On or about February 10, 1941 plaintiffs paid the further sum of \$1.34, representing interest and penalty upon the additional tax thus assessed.

V.

On the 22nd day of September, 1942, the plaintiffs filed a claim for refund of said additional taxes together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title IX of the Act. A copy of the claim is attached hereto as Exhibit "D". The said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943.

VI.

That by reason of the facts hereinabove alleged, plaintiffs have been illegally and erroneously required to pay the additional taxes, together with interest and penalties, in the sum of \$30.14. That the said sum has not been refunded to the plaintiffs and the whole amount thereof, together with interest thereon is now due and owing.

Wherefore, plaintiffs pray for judgment against the defendant in the sum of \$30.14, together with interest thereon as provided by law, and for such other and further relief as the court may deem just and proper in the premises.

A. CALDER MACKAY

ARTHUR McGREGOR

HOWARD W. REYNOLDS [8]

State of California,

County of Los Angeles—ss.

Hooper C. Dunbar, Gordon B. Morris and Craig C. Horton, being duly sworn, say that they are the plaintiffs

above named; that they have read the foregoing Complaint for Recovery of Taxes Paid and know the contents thereof and that the same is true of their own knowledge, except the matters which are therein stated to be upon information and belief and that as to those matters they believe it to be true.

HOOPER C. DUNBAR  
GORDON B. MORRIS  
CRAIG C. HORTON

Subscribed and sworn to before me this 25th day of October, 1943.

(Seal)

DOROTHY M. CREAMER

Notary Public in and for said County and State  
My commission expires Sept. 28, 1947. [9]

[EXHIBIT "A".]

Form 843

Treasury Department

Internal Revenue Service

(Revised April 1940)

### CLAIM

To Be Filed With the Collector Where Assessment Was  
Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

| x | Refund of Tax Illegally Collected.

|   | Refund of Amount Paid for Stamps Unused, or  
Used in Error or Excess.

|   | Abatement of Tax Assessed (not applicable to  
estate or income taxes).

Collector's Stamp  
(Date received)



State of California }  
 County of Los Angeles } ss:

Name of taxpayer or  
 purchaser of stamps Bell View Oil Syndicate

Type Business address 555 South Flower Street, Los  
 or (Street)

Print Angeles, California.

(City) (State)

Residence .....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Sixth, California
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1936, to Dec. 31, 1936
3. Character of assessment or tax Unemployment or S.S. IX-1936 additional tax, penalty & interest.
4. Amount of assessment, \$.....; dates of payment .....
5. Date stamps were purchased from the Government.....
6. Amount to be refunded \$47.40 tax, plus \$13.08 penalty & interest \$60.48 plus interest
7. Amount to be abated (not applicable to income or estate taxes) ..... \$.....
8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19...., on ..... 19....

The deponent verily believes that this claim should be allowed for the following reasons:

See attached statement

(Attach letter-size sheets if space is not sufficient)

Signed BELL VIEW OIL SYNDICATE

by C. C. HORTON, Trustee

by HOOPER C. DUNBAR, Trustee

by G. B. MORRIS, Trustee.

Sworn to and subscribed before me this

21st day of September 1942

MARY E. WHITTHORNE, Notary Public

(Signature of officer administering oath) (Title)

(See Instructions on Reverse Side) [10]

### I.

Claimant filed its original return on Form 940 for the year 1936 and paid a tax thereon in the sum of \$60.03. Under date of September 24, 1940, the Commissioner of Internal Revenue in his letter bearing the symbols A&C: A:AA:4:LGB ruled that this claimant was subject to additional social security taxes on its three trustees. Amended return on Form 940 were prepared by this claimant for this year and filed with the Collector of Internal Revenue on or about November 8, 1940, showing additional taxes by reason of the above ruling of \$47.40. This tax results after proper credit has been allowed for the amount due the State of California which was paid on or about November 7, 1940, in the sum of \$639.90 for said year. On or about December 16, 1940, this claimant paid the further sum of \$13.08 representing interest and penalty upon the additional taxes thus as-



sessed. It is the contention of claimant that these sums, together with interest thereon, should be refunded.

## II.

The taxes involved are social security taxes which the revenue agent contends are collectible under Title IX of the Social Security Act. The problem involved is to determine whether or not the trustees are "employees" of the Bell View Oil Syndicate within the meaning of Section 907 of the Act.

On January 20, 1922, H. W. McFarlane transferred Lot No. 5, Block 82, in Santa Fe Springs to five named trustees. Said trustees, who now constitute those designated by the revenue agent as "employees", were by the terms of the trust instrument directed to drill a well thereon in search of oil. Said instrument vests in the trustees authority to deal with the subject matter of the trust in so far as may be necessary for the production and sale of oil, but the trustees are expressly denied authority to impose any personal liability upon the owners of beneficial interest through obligations incurred by them. [11]

The trust instrument provides that the trustees shall call annual meetings of the holders of beneficial interests, making a full report to them at that time, showing receipts and disbursements made during the year. Although the holders of the beneficial interests have voting rights, nothing in said trust indenture defines the matters upon which their vote shall be controlling, except with respect to the termination of the trust. The instrument further provides that any vacancy occasioned by the death or resignation or refusal to act of any trustee may be filled by the remaining trustees. It is further provided that neither the death of a trustee nor of an owner of beneficial interest shall work a dissolution of the trust there-

by established. The trustees have the power to fix their own remuneration, provided, however, that all expenses shall not exceed 10% of all monies received. After providing for the sale by the trustees of units of beneficial interest the instrument provides that the trustees shall not be liable for any mistake in judgment and that their liability shall be confined to wilful breaches of the trust imposed upon them.

### LAW AND ARGUMENT.

Section 907 (c) of the Social Security Act limits the application of the Act to a tax upon "employment". (See *Charles C. Steward Machine Co. v. Davis*, 301 U.S. 548, 81 L. ed. 1279.) That section provides in part as follows:

"The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer \* \* \*."

It is the claimant's contention that the trustees of the Bell View Oil Syndicate do not constitute "employees" within the meaning of the Act and that therefore the taxes assessed were erroneous and illegal.

It is well established that in construing an act of Congress, words are to be given their natural significance, (*Lincoln v. Ricketts*, 297 U.S. 373, 80 L. [12] ed 724) and they should be applied according to their usual acceptance unless Congress has plainly indicated an intention that they shall be construed otherwise. (*Avery v. Commissioner of Internal Revenue*, 292 U.S. 210, 78 L. ed. 1216.) Thus, when Congress used the term "employee" in the Social Security Act, it must have intended that the term be construed according to its common acceptance.

Article 205 of Regulations 90 provides in part as follows:

“Generally the relationship (employment) exists when the person for whom services are performed has the right to contest and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. \* \* \*”

The same terms are to be found in the Employers' Liability Act and the Supreme Court has held that they are used in their ordinary meanings. (*Hull vs. Philadelphia & Reading Ry. Co.* 252 U. S. 475, 64 L. ed. 670) with the result that the question of whether a person is an employee is to be resolved by determining whether or not the alleged employer *returns* “detailed control” of its employee's actions. (*Chicago R. I. & P. Ry. Co. v. Bond*, 240 U. S. 449, 60 L. ed. 735.)

In the case of this particular claimant it is clear that it reserved no “detailed control” over the acts of its trustees and it had no authority to define how they should act in accomplishing the purposes stated in the declaration of trust. That instrument directs them to drill a well for the production of oil. It vests in them the sole discretion for determining what contracts shall be let, to whom said contracts shall be extended, and the manner and terms of payment. Materials shall be selected by them suitable to the needs as they see them. The only limitation on said trustees is that the fund expended shall not exceed the subscribed capital outlay. In short, they are ap-

pointees under a trust agreement to manage the trust property and are authorized to withhold as compensation for administration, an amount not exceeding ten per cent of all moneys received. That [13] amount must cover the entire administration costs. The trustees may agree as among themselves how they shall divide the compensation to which they are entitled but nothing in the declaration of trust limits them to stipulated salaries.

The foregoing is sufficient to show that the test set up in Article 205 of regulations 90 excludes this claimant from the imposition of the tax; however, additional authorities have been found which support the taxpayer's contention and are worthy of consideration.

In the recent case of *Griswold v. U. S.*, 36 Fed. Supp. 714 (1941), the Court was presented with a factual situation very similar to the one here under consideration. That case involved a trust, where the trustees were the owners of the trust property and were not subject to the control or direction of the shareholders. Also the matter under consideration was the legality of the Social security taxes assessed upon their remuneration as trustees, and the sole problem presented was whether the Trustees were employees under the terms of Title IX of the Social Security Act. In holding that the trustees were definitely not employees under the Act, the Court used the following language on page 718:

"The trustees of this trust are the embodiments of the trust and the trust can only exist when they exist. \* \* \* There is no trust apart from the

trustees. \* \* \* The trust, as distinguished from the trustees, cannot contract or act, and the trustees cannot contract with themselves. They cannot be both employers and employees. The trustees do not employ themselves."

Also, on page 720 the Court said:

"All the shareholders have here is the right to have the property managed for their benefit with no right to instruct the trustees how to do it. No one exercised any control over the trustees. \* \* \* It is plainly apparent that within the terms of Article 205 of Treasury Regulations 90, these trustees are not by any means employees of any separate entity that Section 1101 (a) (3) could be construed to create. The Regulations recognize a trustee or other fiduciary may be an employer, but hardly point out that they may be both employers and employees. The trustees here are not employees in any sense of the word; they are principals subject as far as control is concerned only to the terms of the trust indenture." [14]

On December 19, 1941, the Circuit Court of Appeals, First Circuit, 124 Fed. (2d) 599, affirmed this same case. On page 601, the Court said:

"The relationship of employer and employee in the ordinary sense does not exist here. These trustees render services and receive compensation, but we do not feel that they are subject to such supervision and control as to make them employees within the scope of the congressional intent. \* \* \*

"\* \* \* Since these plaintiffs are not subject to control, they are not employees within the meaning

of the Act. We are not holding that no trustee is an employee. We are merely holding that these plaintiffs are not employees. Of course, there may be a case where a trustee is subject to such control that he would be an employee within the meaning of the Act. This is not such a case."

In view of the foregoing authorities, the claimant respectfully submits that its trustees are not employees within the meaning of the Act. The additional amounts so assessed, together with interest thereon, should be refunded.

### III.

Claimant requests and demands such further or additional refund or refunds as may now or hereafter appear to be due it by reason of the foregoing or on account of (a) any mistake in fact or in law made by itself or any officer, clerk or other employee of the United States Treasury Department in the preparation, amendment and/or adjustment of said return, (b) any mistake in the payment and/or collection of the tax made by any person designated in subdivision (a) of this paragraph, (c) any erroneous or illegal requirement or regulation of any officer, clerk or other employee of the United States Treasury Department, (d) any repealed law, whether heretofore or hereafter repealed, (e) any unconstitutional law, whether heretofore or hereafter declared unconstitutional, or (f) any other act or matter in connection with said return, whether covered by the foregoing or not so covered. [15]



[EXHIBIT "B".]

Form 843

Treasury Department

Internal Revenue Service

(Revised April 1940)

CLAIM

To Be Filed With the Collector Where Assessment Was  
Made or Tax Paid

The Collector will indicate in the block below the kind  
of claim filed, and fill in the certificate on the reverse side.

- |  |   |  |  |
|--|---|--|--|
|  | x |  | Refund of Tax Illegally Collected.                                       |
|  |   |  | Refund of Amount Paid for Stamps Unused, or<br>Used in Error or Excess.  |
|  |   |  | Abatement of Tax Assessed (not applicable to<br>estate or income taxes). |

Collector's Stamp  
(Date received)

State of California        }  
County of Los Angeles } ss:

Name of taxpayer or

purchaser of stamps Bell View Oil Syndicate

Type Business address 555 South Flower Street Los  
or (Street)

Print Angeles California  
(City) (State)

Residence .....

The deponent, being duly sworn according to law, de-  
poses and says that this statement is made on behalf of  
the taxpayer named, and that the facts given below are  
true and complete:

1. District in which return (if any) was filed) Sixth California
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1937, to Dec. 31, 1937
3. Character of assessment or tax Unemployment or SS IX-1937 additional tax, penalty and interest
4. Amount of assessment, \$.....; dates of payment .....
5. Date stamps were purchased from the Government.....
6. Amount to be refunded \$61.80 tax, plus \$3.79 penalty and interest \$65.59 plus interest
7. Amount to be abated (not applicable to income or estate taxes) ..... \$.....
8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19...., on ..... 19,....

The deponent verily believes that this claim should be allowed for the following reasons:

See attached statement

(Attach letter-size sheets if space is not sufficient)

Signed BELL VIEW OIL SYNDICATE

by C. C. HORTON, Trustee

by HOOPER C. DUNBAR, Trustee

by G. B. MORRIS, Trustee.

Sworn to and subscribed before me this

21st day of September 1942

MARY E. WHITTHORNE, Notary Public

(Signature of officer administering oath) (Title)

(See Instructions on Reverse Side)

[16]



[EXHIBIT "C".]

Form 843

Treasury Department

Internal Revenue Service

( Revised April 1940 )

## CLAIM

To Be Filed With the Collector Where Assessment Was  
Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

x	Refund of Tax Illegally Collected.
	Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
	Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp  
(Date received)

State of California }  
County of Los Angeles } ss:

Name of taxpayer or

purchaser of stamps Bell View Oil Syndicate

Type Business address 555 South Flower Street Los  
or (Street)

Print Angeles California  
(City) (State)

Residence .....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed. Sixth California
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1938, to Dec. 31, 1938
3. Character of assessment or tax Unemployment or SS IX-1938 Addtl. tax, penalty and interest
4. Amount of assessment, \$.....; dates of payment .....
5. Date stamps were purchased from the Government.....
6. Amount to be refunded \$41.55 tax, plus \$6.65 penalty and interest \$48.20 plus interest
7. Amount to be abated (not applicable to income or estate taxes) ..... \$.....
8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19..., on ..... 19,....

The deponent verily believes that this claim should be allowed for the following reasons:

See attached statement

(Attach letter-size sheets if space is not sufficient)

Signed BELL VIEW OIL SYNDICATE

by C. C. HORTON, Trustee

by HOOPER C. DUNBAR, Trustee

by G. B. MORRIS, Trustee.

Sworn to and subscribed before me this

21st day of September 1942

MARY E. WHITTHORNE, Notary Public

(Signature of officer administering oath) (Title)

(See Instructions on Reverse Side)

[22]

[EXHIBIT "D".]

Form 843

Treasury Department  
Internal Revenue Service  
(Revised April 1940)

## CLAIM

To Be Filed With the Collector Where Assessment Was  
Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- |   |  |
|---|--|
| x | Refund of Tax Illegally Collected.                                       |
|   | Refund of Amount Paid for Stamps Unused, or<br>Used in Error or Excess.  |
|   | Abatement of Tax Assessed (not applicable to<br>estate or income taxes). |

Collector's Stamp  
(Date received)

State of California        )  
County of Los Angeles    } ss:

Name of taxpayer or  
purchaser of stamps Bell View Oil Syndicate

Type Business address 555 South Flower St., Los An-  
or (Street)

Print      ges, California.  
(City)      (State)

Residence .....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Sixth, California
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1939, to Dec. 31, 1939
3. Character of assessment or tax Unemployment—S.S. IX-1939 Additional tax and interest
4. Amount of assessment, \$.....; dates of payment .....
5. Date stamps were purchased from the Government.....
6. Amount to be refunded \$28.60 tax, plus \$1.84 interest \$30.14 plus interest
7. Amount to be abated (not applicable to income or estate taxes) ..... \$.....
8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19...., on ..... 19,....

The deponent verily believes that this claim should be allowed for the following reasons:

See attached statement.

(Attach letter-size sheets if space is not sufficient)

Signed BELL VIEW OIL SYNDICATE

by C. C. HORTON, Trustee

by HOOPER C. DUNBAR, Trustee

by G. B. MORRIS, Trustee.

Sworn to and subscribed before me this

21st day of September 1942

MARY E. WHITTHORNE, Notary Public

(Signature of officer administering oath) (Title)

(See Instructions on Reverse Side) [28]

[Endorsed]: Filed Oct. 27, 1943. [33]

[Title of District Court and Cause.]

## ANSWER

Comes now the defendant in the above-entitled action and, in answer to plaintiffs' first cause of action, admits, denies and alleges:

### I.

Admits the allegations contained in Paragraph I thereof.

### II.

Admits the allegations contained in Paragraph II thereof, except that payments to the Collector were made November 9, 1940, instead of November 7, 1940, and February 11, 1941, instead of February 10, 1941.

### III.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph III thereof, except that defendant specifically denies that plaintiffs are entitled to the amount therein claimed from the defendant. [34]

### IV.

Admits the allegations contained in Paragraph IV thereof.

### V.

Admits the allegations contained in Paragraph V thereof, except that defendant denies that said Commissioner of Internal Revenue erroneously and/or illegally determined a deficiency in the amount of \$474.00 or any other amount, together with interest and/or penalty.

**VI.**

Admits the allegations contained in Paragraph VI thereof, except that the defendant alleges that the sum of the interest and penalty was \$100.24 instead of \$131.40.

**VII.**

Admits the allegations contained in Paragraph VII thereof.

**VIII.**

Denies the allegations contained in Paragraph VIII thereof, except that defendant admits that plaintiffs were required to pay additional taxes, together with interest and penalty, in the sum of \$60.48, and that none of said sum has been refunded to plaintiffs.

In answer to plaintiffs' second cause of action, defendant admits, denies and alleges:

**I.**

Incorporates herein as if herein set forth in full what was said in answer to Paragraphs I, II and III of plaintiffs' first cause of action.

**II.**

Admits the allegations contained in Paragraph II thereof.

**III.**

Denies the allegations contained in Paragraph III thereof, except that defendant admits that the Commissioner of Internal Revenue, as a result of an examination, determined a deficiency in the amount of \$618.00, together with interest and penalties. [35]

**IV.**

Admits the allegations contained in Paragraph IV thereof, except that defendant alleges that the sum of interest and penalties collected was \$99.79 instead of \$138.74, and that the date of the payment of the tax under the amended return was November 9, 1940, instead of November 8, 1940.

**V.**

Admits the allegations contained in Paragraph V thereof.

**VI.**

Denies the allegations contained in Paragraph VI thereof, except that defendant admits that plaintiffs were required to pay additional taxes, together with interest and penalties, in the sum of \$65.59, and that none of the said sum has been refunded.

In answer to plaintiffs' third cause of action, defendant admits, denies and alleges:

**I.**

Incorporates herein as if herein set forth in full what was said in answer to Paragraphs I, II and III of plaintiffs' first cause of action.

**II.**

Admits the allegations contained in Paragraph II thereof.

**III.**

Admits the allegations contained in Paragraph III thereof, except that defendant specifically denies that the



Commissioner of Internal Revenue erroneously and/ or illegally determined a deficiency in the amount of \$415.50, or any other amount, together with interest and penalties.

#### IV.

Admits the allegations contained in Paragraph IV thereof, except that defendant specifically alleges that the sum of the interest and penalties was \$43.12 instead of \$68.08.

#### V.

Admits the allegations contained in Paragraph V thereof. [36]

#### VI.

Denies the allegations contained in Paragraph VI thereof, except that defendant admits that plaintiffs have been required to pay additional taxes, together with interest and penalties, in the sum of \$48.20, and that none of said sum has been refunded to plaintiffs.

In answer to plaintiffs' fourth cause of action, defendant admits, denies and alleges:

#### I.

Incorporates herein as if herein set forth in full what was said in answer to Paragraphs I, II and III of plaintiffs' first cause of action.

#### II.

Admits the allegations contained in Paragraph II thereof.

#### III.

Admits the allegations contained in Paragraph III thereof.



IV.

Admits the allegations contained in Paragraph IV, except that defendant specifically alleges that the payments therein mentioned were made November 9, 1940, instead of November 7, 1940, and February 11, 1941, instead of February 10, 1941.

V.

Admits the allegations contained in Paragraph V thereof.

VI.

Denies the allegations contained in Paragraph VI thereof, except that defendant admits that plaintiffs have been required to pay additional taxes, together with interest and penalties, in the sum of \$30.14, and that none of said sum has been refunded to plaintiffs.

Wherefore, having fully answered, defendant prays that plaintiffs take [37] nothing by their action, and that defendant be dismissed with its costs in this behalf expended.

CHARLES H. CARR

United States Attorney

E. H. MITCHELL

Assistant United States Attorney

WALTER S. BINNS

Assistant United States Attorney

EUGENE HARPOLE,

Special Attorney Bureau of Internal Revenue

By WALTER S. BINNS

Attorneys for Defendant

[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated and Agreed by counsel for the respective parties herein that the following facts are true and may be considered in evidence:

(1) That at all times hereinafter mentioned, the defendant was and now is a sovereign body politic, that the plaintiffs, Craig C. Horton, Hooper C. Dunbar and Gordon B. Morris were and now are the trustees of Bell View Oil Syndicate, a trust organized and existing under and by virtue of a certain written declaration of trust, dated January 20, 1922, as amended by a written declaration, dated September 10, 1925, and as further amended by a written declaration, dated January 20, 1942. All of said trustees are citizens of the United States and residents of and domiciled in the County of Los Angeles, State of California, within the Sixth Internal Revenue Collection District of the State of California, and at all times hereinafter mentioned maintained and now maintain offices of said trust in the City of Los Angeles, County of Los Angeles, State of [39] California.

(2) That on November 9, 1940, November 19, 1940, December 16, 1940, December 18, 1940 and February 11, 1941, at the times of the collection from the plaintiffs and payment to the defendant of the taxes herein mentioned, Nat Rogan was the Collector of Internal Revenue in and for the Sixth Collection District of the State of California; that said Nat Rogan is not in office as such collector at the time of the commencement of this action.

(3) That plaintiffs duly filed under the name of Bell View Oil Syndicate an original return on Form 940, for

the year 1936, on February 2, 1937, for federal social security and unemployment taxes, and paid the tax thereon in the sum of \$60.03. That after an examination of plaintiff's return, the Commissioner of Internal Revenue determined a deficiency in the amount of \$474.00, together with interest and penalty, as a result of his ruling that the trustees of the trust were employees thereof, whose remunerations were subject to the provisions of Title IX of the Social Security Act, Chapter 531, Stat. 620-648, 42 U. S. C. A., sections 1301-1305. That the trustees and their remunerations in respect to which the deficiency was assessed are as follows:

<u>Trustee</u>	<u>Trustee's Fees 1936</u>
Craig C. Horton	\$18,000.00
Hooper C. Dunbar	16,200.00
Gordon B. Morris	13,200.00
	<hr/>
Total	\$47,400.00

(4) That said amount of \$474.00, together with interest and penalty in the sum of \$100.24, was thereafter assessed. Plaintiffs thereupon filed an amended return for the year 1936, and on November 9, 1940, plaintiffs paid the sum of \$47.40, having taken credit of ninety per cent of the tax for amounts paid to the State of California. On December 16, 1940 plaintiffs paid the further sum of \$13.08, representing interest and penalty upon the additional taxes thus assessed.

(5) That on the 22nd day of September, 1942, the plaintiffs filed a claim for refund of said additional taxes, together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title [40] IX of the Act. A true and correct copy of

the claim is attached to the complaint in this action as "Exhibit A", and is hereby incorporated herein as if set out in full. That said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943, and no part of the sum of \$60.48 has been refunded to the plaintiffs.

(6) That plaintiffs duly filed under the name of Bell View Oil Syndicate an original return on or before January 31, 1938, on Treasury Form 940 for the year 1937 for social security and unemployment taxes, and paid the tax thereon in the sum of \$70.69. That the Commissioner of Internal Revenue thereafter determined a deficiency as a result of his ruling that Craig C. Horton, Hooper C. Dunbar, and Gordon B. Morris, trustees of the trust, were employees thereof, whose remunerations were subject to the provisions of Title IX of the Social Security Act in the amount of \$618.00, together with interest and penalties. That the trustees and their remunerations in respect to which the deficiency was assessed are as follows:

<u>Trustee</u>	<u>Trustees' Fees 1937</u>
Craig C. Horton	\$12,500.00
Hooper C. Dunbar	10,700.00
Gordon B. Morris	7,700.00
	<hr/>
Total	\$30,900.00

(7) That said amount of \$618.00, together with interest and penalties in the sum of \$99.79 was thereafter assessed. Plaintiffs thereupon filed an amended return for the year 1937, and on November 9, 1940, plaintiffs paid the sum of \$61.80, having taken credit of ninety per cent of the tax for amounts paid to the State of California. On December 16, 1940, plaintiffs paid the

further sum of \$3.79, representing interest and penalty upon the additional taxes thus assessed.

(8) That on the 22nd day of September, 1942, the plaintiffs filed a claim for refund of said additional taxes, together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title IX of the Act. A true and correct copy of the claim is attached to the complaint in this action as "Exhibit B", and is hereby incorporated herein as if [41] set out in full. The said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943, and no part of the sum of \$65.59 has been refunded to the plaintiffs.

(9) That plaintiffs duly filed under the name of Bell View Oil Syndicate an original return on Treasury Form 940 on or before January 31, 1939, for the year 1938 for social security and *employment* taxes and paid the tax thereon in the sum of \$96.13. That the Commissioner of Internal Revenue thereafter determined a deficiency as a result of his ruling that Craig C. Horton, Hooper C. Dunbar and Gordon B. Morris, trustees of the trust, were employees thereof, whose remunerations were subject to the provisions of Title IX of the Social Security Act in the amount of \$415.50, together with interest and penalties. That the trustees and their remunerations in respect to which the deficiency was assessed are as follows:

<u>Trustee</u>	<u>Trustees' Fees 1938</u>
Craig C. Horton	\$ 5,700.00
Hooper C. Dunbar	4,950.00
Gordon B. Morris	3,200.00
	<hr/>
Total	\$13,850.00

(10) That said amount of \$415.50, together with interest and penalty in the sum of \$43.12, was thereafter assessed. Plaintiffs thereupon filed an amended return on Treasury Form 940 for the year 1938, and on November 9, 1940 plaintiffs paid the sum of \$41.55, having taken credit of ninety per cent of the tax for amounts paid to the State of California. On December 16, 1940, plaintiffs paid the further sum of \$6.65, representing interest and penalty upon the additional tax thus assessed.

(11) That on the 22nd day of September, 1942, the plaintiffs filed a claim for refund of said additional taxes, together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title IX of the Act. A true and correct copy of the claim is attached to the complaint in this action as "Exhibit C", and is hereby incorporated herein as if set out in full. The said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943, and no part of the sum of \$48.20 has [42] been refunded to the plaintiffs.

(12) That plaintiffs duly filed under the name of Bell View Oil Syndicate an original return on or before January 31, 1940 on Treasury Form 940, for the year 1939 for social security and unemployment taxes and paid the tax thereon in the sum of \$89.11. That the Commissioner of Internal Revenue thereafter determined a deficiency as a result of his ruling that Craig C. Horton, Hooper C. Dunbar, and Gordon B. Morris, trustees of the trust, were employees thereof, whose remunerations were sub-



ject to the provisions of Title IX of the Social Security Act. That the trustees and their remunerations in respect to which the deficiency was assessed are as follows:

<u>Trustee</u>	<u>Trustees' Fees 1939</u>
Craig C. Horton	\$ 4,200.00
Hooper C. Dunbar	4,200.00
Gordon B. Morris	1,200.00
	<hr/>
Total	\$9,600.00

(13) That plaintiffs thereupon on November 19, 1940, filed an amended return on Treasury Form 940 for the year 1939, and paid the sum of \$28.80, having taken credit of ninety per cent of the tax for amounts paid to the State of California. On February 11, 1941 plaintiffs paid the further sum of \$1.34 representing interest and penalty upon the additional tax thus assessed.

(14) That on September 22, 1942, the plaintiffs filed a claim for refund of said additional taxes, together with interest and penalty, on the ground that the trustees were not employees within the meaning of Title IX of the Act. A true and correct copy of the claim is attached to the complaint in this action as "Exhibit D", and is hereby incorporated herein as if set out in full. The said claim was denied by the Commissioner of Internal Revenue in a letter dated July 12, 1943, and no part of the sum of \$30.14 has been refunded to the plaintiffs.

(15) That the Bell View Oil Syndicate trust was organized under a written declaration of trust dated January 20, 1922, which was amended by a written declaration dated September 10, 1925, the effect of which was to

wholly [43] strike out from said declaration Articles Nine and Nineteen and to reduce the par value of units of beneficial interest in the trust from \$100.00 to \$10.00 and to increase their number from 5,000 to 50,000. A true and correct copy of said original declaration of trust dated January 20, 1922 is attached hereto as "Exhibit E".

Dated November 16, 1944.

A. CALDER MACKAY,  
ARTHUR McGREGOR.  
HOWARD W. REYNOLDS,  
By ARTHUR McGREGOR

Attorneys for Plaintiffs  
CHARLES H. CARR,  
United States District Attorney,  
EDWARD H. MITCHELL.

Assistant United States District Attorney

By EUGENE HARPOLE  
Attorneys for Defendant [44]

### [EXHIBIT E.]

### DECLARATION OF TRUST

Know All Men by These Presents: That the trust estate created herein shall be designated by the name of and shall be known as

### BELL VIEW OIL SYNDICATE

and that

Whereas, H. W. McFarlane, of the County of Los Angeles State of California, has heretofore sold, assigned, transferred, and conveyed unto C. C. Horton, W. A. Roberts, Phil Grohs, H. W. McFarlane and Hooper C. Dunbar, hereinafter designated as trustees, oil and gas leases



on that parcel and piece of real property more particularly described as follows:

Lot 5, Block 82, in Santa Fe Springs, as recorded in Book 76, Page 37, et seq., miscellaneous records of Los Angeles County, California:

It Is Hereby Expressly Understood and Agreed, that the said trustees have accepted, received and will hold, such rights, titles, interests and estates as have been assigned and conveyed to them and by them acquired under the above mentioned assignment and conveyance, in trust, nevertheless, for the uses and purposes set forth in this declaration of trust, to-wit:

#### Trust Created:

First: The said trustees, or their successors, shall hold all the funds and property of said trust estate now or hereafter coming into their possession, for the purposes, with the powers, and subject to the limitations herein declared; and it is hereby expressly declared that a trust and not a partnership or corporation is hereby created: and the *the* Bell View Oil Syndicate, is a trust and not a partnership or a corporation.

The principal place of business and office of said trust estate, and of the trustees, shall be in the City of [46] Los Angeles, State of California.

#### Exhibit "A"

#### Trust Estate and Property:

Second: It is an express condition of this trust that the trust estate and property are, and shall be, only such rights, titles, estates and interests as said trustees may have received under said assignment and conveyance, or shall hereafter acquired subject to this trust, and the

trustees are not, and shall not be responsible or assume any liability for the nature, value or extent of the title to any of the property hereinbefore described and accepted in trust hereunder, or that may hereafter be added to this trust as hereinbefore provided, nor for any adverse or conflicting claims or interests therein of any persons.

#### Duties of Trustees:

Third: During the term of this trust, said trustees out of the moneys subject to this trust, whether principal or income therefrom, shall drill or cause to be drilled on the above described premises, a well, or wells, for oil to a depth of four thousand feet unless oil in paying quantity be found at a lesser depth; and pay, or cause to be paid from such moneys, the entire expense of drilling and equipping said well, or wells, including all rigging, casing, pipe and other material and all labor, fuel, and water, and assume all responsibility and liability incident to said operation, subject to the limitations herein set forth. And when oil shall be found in paying quantity in the said well, or wells, such well, or wells, will be completed and shut in with all necessary fittings and equipment and connected with pipe lines for marketing of oil therefrom; and from such moneys, subject to this trust, said trustees shall erect necessary derricks, buildings, and other structures and procure necessary machinery and procure reasonable insurance upon all insurable property [47] owned by them on the trust estate and shall pay or secure the payment of all liens, encumbrances, taxes, assessments or other charges against said property, properly chargeable to the trustees and necessary to protect their title to the trust estate, for the purpose of this trust; but in the event that said trustees shall not have such funds available and of

sufficient amount to fully pay for such charges and expenses, or any operations required of them herein, neither said trustees nor any unitholder shall be liable in any event, amount or degree, or to any person for any loss or damage suffered by reason thereof, to the trust estate or to any unitholder of this trust or to any other person whomsoever.

#### Powers of Trustees:

Fourth: The trustees, in the name of the Bell View Oil Syndicate, shall have full power, except as herein limited, to develop, operate, sell and deal in petroleum, oil properties and wells, and to buy, acquire, construct, maintain, operate pipe lines, and deal in machinery, implements, tools, conveniences of all kinds capable of being used in connection with oil, gas or other utilities. The execution of all contracts, of all conveyances and transfers and of all other instruments relating to the trust fund or any part thereof, by or pursuant to the authorization of a majority of the said trustees, or their successors, shall always be sufficient.

The trustees hereunder and their successors, shall have and exercise the exclusive management and control of the trust estate; they may adopt and use a common seal, collect, sue for, receive and receipt for all sums of money at any time coming due, to said trust; may employ counsel to begin, prosecute, defend or settle suits at law, in equity, or otherwise, and to compromise or refer to arbitration, any claims in favor of or against the [48] trust.

During the term of this trust and to enable them to properly execute the same according to the terms, provisions and intentions hereof, the trustees shall have full power to hold or convey, grant, bargain, sell, lease for

terms, to repair any improvements thereon or therein of such character, amount, costs, and from such funds or property, subject to this trust as they may deem advisable; and to drill, operate for develop and remove petroleum, oil, naptha. natural gas, asphaltum or other kindred substances in and from the real property described hereinabove, or any other property which may be acquired by said trustees; and generally in all respects to manage, handle, develop and dispose of the whole or any part of the trust estate in conformity with the terms of this trust; said trustees are hereby vested with the sole power and discretion to discern what will constitute principal and what will constitute gross income therefrom and net income available for payment or distribution under the terms of this trust, provided, however, that not to exceed ten (10) per cent of all moneys received by the trustees shall be used to defray office expenses, officers' salaries and all overhead expenses.

#### Liability of Trustees and Unitholders:

Fifth: The trustees shall have no power to bind the unitholders personally, otherwise than as hereinbefore provided and the unitholders and their assigns and all persons and corporations extending credit or contracting with or having any claim against the trustees shall look only to the funds or property of the trust for payment under such contract or claim, or for payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable from them to the trustees so that neither the trustees nor the unitholders, present or future, shall be personally liable therefore, and neither the trustees, nor any of them, shall ever be personally liable hereunder [49] as partners, or otherwise; but for all debts the trustees shall be liable only to the

extent of the trust funds or property held by them. In every written order, contract or obligation which the trustees shall give or enter into, it shall be the duty of the trustees to stipulate that neither the trustees nor the unit-holders or their successors shall be held to any personal liability under or by reason of any order, contract or obligation.

The trustees shall not be liable for errors of judgment either in holding the property originally conveyed to them or in acquiring and afterward holding additional property, nor for any loss arising out of any investment, nor for any act performed or omitted by them in the execution of this trust in good faith; nor shall they be liable for the acts or omissions of each other, or any officer, agent, or servant appointed by or acting for them; and they shall not be obligated to give any bond to secure the due performance of this trust by them. No assessment shall ever be made upon the unitholders or their assigns.

#### Number of Trustees and Vacancies:

Sixth: Any vacancy occasioned by the death or resignation or refusal to act of any trustee may be filled by the remaining trustees, and the trustee or trustees so appointed shall have the same powers, duties and liabilities as the original trustees hereunder. Upon resignation, decease, incapacity, or removal, or vacancy for any cause, the title of the outgoing trustee, or trustees, shall rest in the remaining trustees, and upon the filling of any vacancy by the remaining trustees, as aforesaid. the title of the whole trust property shall rest in all the trustees whether appointed hereunder or by the remaining trustees to fill vacancies, as hereinbefore provided.

### Units in Trust Estate:

Seventh: The trust estate consists of five thousand equal and undivided interests, which undivided interests are [50] herein referred to as "units", of the nominal, or par value of \$100.00 each; and the owners of the undivided interests, or units, of the trust estate, and their assigns and grantees, are herein designated as "unitholders". The units in said trust estate are undivided and indivisible and the holders and owners of the said units have no right of partition or segregation or dissolution either in law or in equity; and the trust estate shall be managed and controlled as an entirety and for the benefit of all the unitholders according to the number of units held by each and as herein set forth.

In consideration of the sale, transfer, assignment and conveyance by the said H. W. McFarlane, of the said leases hereinbefore referred to, to the trustees hereunder, it is mutually understood and agreed, that the said H. W. McFarlane is now the owner of 1000 units in the trust estate hereby created and the said trustees have and do hereby agree to issue to the said H. W. McFarlane or his order, transferable certificates for said 1000 units in the said trust estate.

### Sale of Units and Certificates:

Eighth: In addition to the said 1000 units to be issued to the said H. W. McFarlane, in consideration for the transfer, sale, assignment and conveyance of the leases hereinbefore referred to, the trustees shall issue and sell at public or private sale, upon such terms and for such prices as they may deem expedient, such additional units as may be necessary to provide means for the prosecution and furtherance of the objects of this trust and to



defray the costs and expenses thereof, subject, however, to the approval of the Commissioner of Corporations or other proper officers to the State of California.

In the case of a loss or destruction of any certificates for units issued by the trustees, the trustees may, under such conditions as they may deem expedient, issue a new certificate or certificates in the place of one lost or destroyed. [51]

As evidence of the ownership of said units, the trustees shall cause to be issued to each unitholder, a transferable certificate or certificates, which certificates shall be in the form following, to-wit:

Number:

Units:

BELL-VIEW OIL SYNDICATE

Los Angeles, California.

Capital — \$500,000.00

This Is to Certify That .....  
is the owner of ..... units fully paid  
and nonassessable, of the par value of One Hundred  
(\$100.00) Dollars each, of the beneficial interest in the  
Bell-View Oil Syndicate, a business trust, transferable  
only on the books of the company by the owner thereof in  
person or by duly authorized attorney upon surrender of  
this certificate properly endorsed.

This certificate is held subject to an Agreement and  
Declaration of Trust, dated January ....., 1922, and  
which is recorded in the office of the County Recorder  
of Los Angeles, California, and which is hereby referred  
to and made a part of this certificate.



Said Declaration of Trust provides:

That the trustees shall declare a dividend each three months of not less than sixty percent of the net income derived from the operations of said properties and from the sale of oil therefrom, and

That not to exceed ten (10) percent of all moneys received shall be set aside to defray office and other overhead expenses, and

That no unitholder shall ever be personally liable for any debt, covenants, demands, contracts or torts of any kind of this company.

Witness, the signatures of the trustees of said company this ..... day of ....., A. D. 19.....

BELL-VIEW OIL SYNDICATE

By .....

President of the Board

Attest:

.....

Secretary of the Board.

Dividends:

Ninth: The trustees shall quarterly declare dividends out of the net earnings or profits of said trust, which said [52] dividends shall dispose of all the net earnings or profits of said trust, less the ten (10%) per cent of said net earnings or profits herein provided to take care of overhead, said dividends on all of the net earnings to continue to be declared quarterly until there has been paid back to the unitholders, by way of dividends, an amount equal to the total cost of drilling the first well; when said total cost of drilling the first well has been so paid, there-

after the trust shall quarterly declare dividends of not less than sixty (60%) per cent of the net earnings or profits of said trust, the balance of said net earnings not otherwise used for overhead expenses as herein provided, to be used at the discretion of the Board of Trustees for the development of future acquired properties. If, after said sixty (60) per cent dividends on the net earnings be declared and the balance of the moneys remaining in the hands of the trustees are not used within six (6) months from the date of declaration of said dividend for future development work then, and in that event, the balance so remaining shall immediately, without any request from any unitholder, be declared in the form of an extra dividend and distributed to unitholders.

#### Meetings of Trustees and By-Laws:

Tenth: Meetings of the trustees shall be held from time to time upon the call of the president or any three of the trustees. A majority of the trustees shall constitute a quorum, but in no event can any meeting of said trustees be held, nor any business transacted binding upon this trust unless, and until all of the trustees herein named shall first have received written notice of said meeting; the concurrence of all the trustees shall not be necessary to the validity of any action taken by them, but the wish of a majority of the trustees present and voting at any meeting shall be conclusive unless in this declaration of trust specifically provided otherwise. The trustees may make, adopt, amend or repeal such by-laws, rules and regulations, not [53] inconsistent with the terms of this instrument, as they may deem necessary or desirable for the conduct of their business and for the government of themselves and their agents, servants and representatives.

**Officers:**

Eleventh: The trustees shall annually elect from among their number a president and vice-president, and shall also annually elect a treasurer and secretary, and they shall have authority to appoint such other officers, agents and attorneys *and* they may from time to time deem necessary or expedient for the conduct of their business. They shall have authority to remove any and all officers, agents and employees at their pleasure; to accept resignations and to fill any vacancy occurring in the office of President, Vice-President, Treasurer, or Secretary, for the unexpired term, and shall likewise have authority to elect temporary officers to serve during the absence or disability of the regular officers. The president, vice-president, treasurer and secretary shall have such authority and perform such duties as may from time to time be determined by the trustees. The trustees shall fix the compensation of any and all officers and agents whom they may appoint or employ and are likewise authorized to pay to themselves such compensation for their own services as they may deem reasonable, but in no event shall said total compensation exceed the ten (10%) per cent limitation herein set forth in this contract.

Twelfth: The trustees shall call meetings of the unitholders, annually, on the third Wednesday of March, and shall prepare and submit to the unitholders at such meeting, a full report of their operation including moneys received and disbursed for the year ending on the 31st day of January, preceding. They may also call special meetings of the unitholders at any time. [54]

**Notice of Meetings:**

Thirteenth: Notice of annual and special meetings shall be deemed binding upon each of the unitholders if mailed,

prepaid, to the last address given by him, to the trustees, or in default thereof, to his last business place or abode. Notices of meetings shall be given five (5) days beforehand and may be given by advertisement for three (3) successive days in a paper of general circulation published in the City of Los Angeles, County of Los Angeles, State of California, the last publication to be at least five (5) days before the date of the meeting, or may be mailed, at the option of the trustees. In notices of special meetings, the purpose thereof shall be stated.

#### Voting:

Fourteenth: Unitholders may vote by proxy at any annual or special meeting called by the trustees, and a majority of the unitholders present may decide all questions at such meetings, the holders of fifty per cent of the units, or their proxies, constituting a quorum.

Fifteenth: The trustees shall keep a book for the recording therein of the names and addresses of unitholders and of the sales and transfers of units. No sale or transfer of any unit in said trust estate shall be valid or binding on said trustees, or their successors, until the purchaser or the transferee shall have notified the trustees in writing of the said purchase and shall have, also in writing, accepted, consented to, approved, ratified and confirmed all of the terms, conditions and provisions of this declaration of trust, except where such interest may pass or be transferred by decree, order or judgment of a court of competent jurisdiction, and then only upon proof satisfactory to the trustees of the regularity and validity of the proceedings in such matter being presented to the trustees: and in all cases of transfer of units, the trustees may required [55] proof satisfactory to themselves of the title of the claimant as owner of the units.

### Effect of Death of Trustees or Unitholders:

Sixteenth: The death of a unitholder or trustee during the continuance of this trust shall not operate to determine the trust, nor shall it entitle the legal representatives of the deceased unitholder to an accounting or to take any action in the courts or elsewhere, against the trustees, but the executors, administrators or assigns of any deceased unitholder shall succeed to the rights of said decedent under this trust upon surrender of the certificate or certificates, for the units owned by him.

### Amendment of Declaration:

Seventeenth: The trustees may, with the consent of the holders of two-thirds of the outstanding units of the trust estate, alter or amend this declaration or terminate this trust or transfer the trust property to a person or persons, or a duly organized corporation.

### Duration of Trust:

Eighteenth: This trust shall endure and continue until the expiration of twenty (20) years from the date hereof, and may then, or at any time prior thereto, be terminated, or may then be continued by a two-thirds ( $\frac{2}{3}$ ) majority of the votes of units then outstanding. The trustees shall not be required to give bond, and each shall be liable only for his own acts and then only for wilful breach of trust. Upon termination of the trust hereby created, the trustees shall liquidate the trust estate and divide the remaining assets among the unitholders in proportion to their respective interests, or shall convey the whole of the trust estate subject to all then existing

assessments, encumbrances, or other matters affecting title to the unitholders therein entitled to take the same under the terms hereof; provided, however, that first all the charges and expenses therein due the trustees hereunder shall be fully paid and said trustees [56] shall be fully relieved and discharged from all then existing and future obligations, and liabilities.

Nineteenth: None of the powers in paragraph four (4) in this Agreement set out, shall be construed as authorizing the trustee, without the consent of a majority of the units represented at a regularly called meeting of the unitholders, from acquiring new properties or leases, or from disposing of the whole or any part of the capital, or assets, or other properties of this trust, either in whole or in part, it being the specific intention of this paragraph to compel said trustee to secure the approval and ratification of the majority of the units represented at any regularly called meeting before disposing of the properties above listed, or acquiring new properties on behalf of the trust.

In Witness Whereof, the parties have hereunto subscribed their names at the City of Los Angeles, County of Los Angeles, State of California, on this 20th day of January, 1922.

C. C. HORTON

W. A. ROBERTS

H. W. McFARLANE

PHILIP A. GROHS

HOOPER C. DUNBAR

[Endorsed]: Filed Nov. 16, 1944. [57]



[Title of District Court and Cause.]

## STATEMENT OF TESTIMONY

Hooper C. Dunbar, one of the plaintiffs called as a witness on behalf of the plaintiffs, having been first duly sworn, testified upon direct examination as follows:

My name is Hooper C. Dunbar. My address is 436 North Maple Drive, Beverly Hills. I am one of the three trustees operating under the trust indenture dated January 20, 1922 for Bell View Oil Syndicate. I know of the duties and activities of the three trustees. The other two trustees are C. C. Horton and G. B. Morris. We operated the oil property at Santa Fe Springs, produced the oil and disposed of it, and did such other work as is incidental thereto, from that property on which we drilled certain oil wells. There were six wells drilled. We have title to other property. We always take title as Hooper C. Dunbar, G. B. Morris and C. C. Horton, as trustees for the Bell View Oil Syndicate, an unincorporated trust estate. Our regular meeting is every Tuesday morning, and then we have other meetings. We maintain our office in the Richfield Building [58] at Sixth and Flower. We have an annual meeting of the unit holders, called because the trust agreement provides that an annual meeting for unit holders be called and a statement of receipts and disbursements submitted to them. There is no provision for any other matters at the annual meeting. Some of the unit holders attend these meetings. We have about 400 unit holders and there have probably never been more than six or seven attend the annual meeting. The trustees have never adopted any by-laws. None of the trustees have ever been discharged. They have been reduced to three instead of five by death. Five were



originally provided for. It is permissive as to whether a successor be appointed. If so, the appointments would be made by the remaining trustees. The participating unit holders voted on the amendment of the trust agreement. It is provided in the trust agreement that they have a right to vote if the trust agreement is amended. The participating unit holders have a right to vote if they amend the trust agreement, but only on an amendment. There have been two amendments. I am not sure whether the taxes have been paid. I would refer it to our tax counsel, Mr. McGregor. We carry our own bank account for the money received under the trust in the names of the three trustees. It requires the signatures of three trustees upon our checks for disbursements. In our correspondence with the Bell View Oil Syndicate, we sign our letters as trustees. Our law suits are conducted in the trustee's names. We are sued as trustees for the Syndicate, and we sue as trustees for the Syndicate. We execute contracts as trustees. We execute contracts for the sale of oil as trustees for the Bell View Oil Syndicate. That is, we name the individuals as trustees for the Bell View Oil Syndicate. The trust agreement provides a limitation of 10% of the gross upon our compensation, so we have to consider what the gross return is first, and including trustees' compensation and all other overhead, it must not exceed the 10% provided therein. Then the Supreme Court, in a case, has also said that it must be reasonable within those limitations, that is, the Supreme Court of California. That was in a declaratory relief action, brought by the trustee against the unit holders to determine and obtain [59] a clearance on their acts, and it was carried to the Supreme Court. It was in that case.

We pay no salary or other compensation to the trustees and officers. We do have officers. They are: President, Vice-President, Secretary and Treasurer. We elect those officers once a year. No powers have ever been delegated to any of these officers. All contracts are signed by the three of us. All instruments executed on behalf of the trustees or the syndicate, with the exception of letters, are signed by all three of us. The tax returns are signed the way they are prepared for us by tax counsel. The Government I believe, requires two signatures, two officers or two trustees. I believe we have signed them apparently at different times, but however they prepare them.

The 1939 federal income tax Form 1120 is signed by C. C. Horton, Secretary-Treasurer. It bears the signature of G. B. Morris and C. C. Horton. They acknowledged it as the return under Horton's signature, the said Secretary, or Secretary-Treasurer. Underneath Mr. Morris' signature, there is printed on the return, "President or other principal officer". There is no place on the form for any trustees to sign. The claim for refund has never been signed or transferred. We have never had any action or claim or other proceedings to collect this refund that I know of. The trustee never adopted any by-laws. The trustees never elected any directors or unit holders, or stockholders as officers. They never employed or appointed any officer as such. The trustee exercised no control over any of the unit holders. As a trustee, I am a unit holder. The unit holders never exercised any control over any of the trustees or the trust assets. The three trustees formulated policies in dealing with the trust property.

Upon cross examination, Mr. Dunbar testified as follows:

We are required under the trust agreement to publish a notice of the annual meeting, fixing a time and place which has almost always, with one exception, been in our place of business, our office. At that time there may be two or three, I think one time as many as six unit hold- [60] ers would come up to receive a statement of receipts and disbursements, which we are required to furnish the unit holders annually. We do not state in the notice sent to the unit holders, what is to be said or done at the annual meeting. Frequently there is discussion at the annual meeting and questions asked about future plans. The statement is passed out. Trustee Horton usually passes them out to those present, and then discusses certain points in them. Sometimes the meetings will last ten or fifteen minutes, sometimes a little longer. We mail to all the other unit holders who have not attended, a statement of receipts and disbursements. We record those who attend the annual meeting as a matter of record. I think sometimes that some mention is made of the motions the unit holders bring up for discussion in connection with the statements rendered in the report of the meeting. The trustees do not subsequently take action upon the matters that are discussed by the unit holders at these meetings. The unit holder has no power to instruct the trustees as to what to do. We may consider suggestions that are made, and if we think they are good, act favorably on them. We are not required to.

Of the 300,000 outstanding capital, I doubt very much if there has been one percent of it attend an annual meeting—a very small attendance. I account for that because there isn't anything that the unit holder can do. We have

paid them at least 1000% on the original money invested. There are 30,000 units outstanding in this Syndicate, of a par value of \$10.00 each. I wouldn't know how many of these outstanding units are held by the three trustees without consulting the books. I hold something over 3,000. I hold a little more than 10% of the outstanding units. I think Mr. Morris holds about 10% and Mr. Horton a little less I believe. That is only my personal opinion. Originally 7500 units were owned by the five trustees. There were approximately 20,000 units outstanding at the time and approximately 7500 of them were in the hands of the trustees.

The selection of our tax counsel was with the consent and approval of the three trustees. The trustees have an official seal. We put the official seal on our stock certificates or unit certificates, rather. I [61] think when the bank has asked for it we have put it on the bank account agreement, or signature card. At the present time I am President, Mr. Morris is Vice-President, and Mr. Horton is Secretary-Treasurer of the Bell View Oil Syndicate. That was the roster of officers during the years of 1936, 1937, 1938 and 1939. The trustees have elected the same officers for those years, and the officers are always elected from the membership of the trustees. The citation of the California Supreme Court case that I spoke of is: *Dunbar, et al. - v - Anderson, et al.*, as I recall it. Mr. Anderson was one of the unit holders, the first one alphabetically on the list. The trustees started it. We asked the Court for declaratory relief. I do not recall that a

deduction was claimed on the Bell View Oil Syndicate's 1939 corporate income and excess profits tax return for the compensation of its officers.

I do not have any other occupation, profession or employment that I followed during any of the years 1936, 1937, 1938 and 1939, aside from being the trustee of the Bell View Oil Syndicate. I devoted whatever time I thought was necessary to the affairs of this trust.

Dated: this 15th day of March, 1945.

It is hereby stipulated by and between counsel for the appellant and appellee that the above entitled statement of evidence may be considered part of the record on appeal.

CHARLES H. CARR,

United States Attorney,

E. H. MITCHELL,

Asst. United States Attorney

GEORGE M. BRYANT,

Asst. United States Attorney

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue

By EUGENE HARPOLE

Attorneys for Defendant-appellant.

MACKAY, MCGREGOR AND

REYNOLDS

By ARTHUR MCGREGOR

Attorneys for Plaintiff-appellee

[Endorsed]: Filed Mar. 30, 1945. [62]

## [PLAINTIFFS' EXHIBIT NO. 1.]

## TREASURY DEPARTMENT

Washington 25

Jul 12 1943

[Crest]

Office of  
Commissioner of Internal Revenue

Address Reply to  
Commissioner of Internal Revenue  
and Refer to

A&amp;C:A:AA:4-LGB

Cl-760953, et al.

Bell View Oil Syndicate,

555 South Flower Street,

Los Angeles, California.

Sirs:

Reference is made to Bureau letter of February 12, 1943, relative to your claims for refund of tax, together with penalty and interest involved, imposed under the provisions of Title IX of the Social Security Act and the Federal Unemployment Tax Act for the years and in the amounts shown below:

Claim Number	Period	Amount Claimed
760953	1936	\$60.48 tax, penalty, and interest
760952	1937	\$65.59 tax, penalty, and interest
760954	1938	\$48.20 tax, penalty, and interest
760955	1939	\$30.14 tax and interest

The basis of the claims is that the three trustees, who were held in Bureau letter of September 24, 1940, to be



your employees for the purposes of the Federal tax, should not be so considered and that you are not subject to the tax, together with penalty and interest involved, which you have paid with respect to the remuneration of those individuals. In the letter of February 12, 1943, you were advised that when a decision had been rendered concerning the question involved, you would be further informed and your claims would be adjusted.

In a letter dated September 21, 1942, from Mackay, McGregor and Reynolds, 1235 Pacific Mutual Building, Los Angeles, California, it is stated that the facts which existed in your case are substantially the same as those in the case of *United States v. Griswold, et al* (C. C. A. 1st, 1941) 124 F. (2d) 599, and it is urged that your claims be allowed on this basis.

In the reply of this office dated June 17, 1943, this firm was advised that the general position of the Bureau with respect to the status, for [63] employment tax purposes, of the trustees or other fiduciaries of a business trust or association who are engaged in conducting its affairs and who occupy positions analogous to those of officers of a corporation is expressed in S. S. T. 284, C. B. 1938-1, page 474; that it is true that the determinations of the Circuit Court of Appeals in the case of *United States v. Griswold, et al.* (C. C. A. 1st, 1941) 124 F. (2d) 599, are contrary to such general position; but that, in view of the provisions of the statute involved, the Bureau does not feel warranted in reversing its general position on the basis of the decision in that particular case.

This firm was advised further that, considering the facts presented in your claims in the light of the general position of the Bureau, it would be necessary to adjust



the claims in accordance with the ruling previously made to you. In accordance with the above, you are liable for payment of tax, penalty, and interest in the amounts of your claims and the claims are disallowed.

This notice of disallowance is sent to you by registered mail in accordance with the provisions of Section 3772(a) (2) of the Internal Revenue Code.

An examination of your original and amended returns, Form 940, for the year 1939, indicates an increase in tax as set forth below:

	Shown by Amended Return	Revised
Taxable wages	\$39,301.65	\$39,301.65
Tax, 3% of wages	1,179.05	1,179.05
Less credit for contributions paid into the State fund	1,061.14	1,035.22
Balance of tax	\$ 117.91	\$ 143.83
Less tax previously assessed		117.91
Additional tax due		\$ 25.92

In accordance with the provisions of Section 1601 (a) (3) of the Federal Unemployment Tax Act, credit for required contributions, with respect to the years 1939 and 1940, paid on or before the due date of the return, is allowable to the extent of ninety per cent of the Federal tax. This section also provides that credit for required contributions, with respect to the years 1939 and 1940, paid after the due date, is limited to ninety [64] per cent of the amount which would have been allowable on account of such contributions had they been paid on or before such due date. Under Section 701 of the Revenue Act of 1941, credit may also be allowed for contributions paid after June 30 next following the due date of the re-

turn but before November 19, 1941, but such credit is limited to ninety per cent of the amount which would have been allowable on account of such contributions had they been paid on or before the due date of the Federal return.

Credit for contributions under the provisions of Section 701 may be allowed only if claimed before March 21, 1942.

Information from the State of California shows that contributions of \$801.94 for the year 1939 were paid on or before January 31, 1940, and that an additional payment of \$259.20 was made on December 7, 1940.

In accordance with the above provisions, credit of \$1,035.22 only is allowable against the Federal tax of \$1,179.05 for contributions paid. The credit of \$1,035.22 represents the contributions of \$801.94 and ninety per cent of the contributions of \$259.80.

The additional tax of \$25.92 for the year 1939, together with interest, is being assessed and reported to the office of the Collector of Internal Revenue, Los Angeles, California, which will issue notice and demand therefor. Payment should then be made to the office of the collector and not to this office.

Respectfully,

Guy T. Helvering.

LGB:CAG

Commissioner.

By Geo. Schoeneman

Deputy Commissioner.

Case No. 3259-PH. Dunbar vs. U. S. A. Plfs. Exhibit #1. Date No. 21, 1944 in evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. J. M. Horn, Deputy Clerk. [65]

## [PLAINTIFFS' EXHIBIT NO. 4.]

BELLVIEW OIL SYNDICATE

No. 16442

526 Richfield Bldg.

555 So. Flower St.

Los Angeles, Calif.

[Stamped]: Paid

Los Angeles, Calif. September 10, 1936

Pay to the

Order of C. C. Horton

\$1,500.00

Fifteen Hundred .....Dollars

1 - Head Office - 16-11

Citizens National Bank

Trust &amp; Savings

of Los Angeles

Spring Street at Fifth

Los Angeles, California

BELL VIEW OIL SYNDICATE

Hooper C. Dunbar

Trustee

G. B. Morris

Trustee

This Check Will Not Be Honored if Voucher Is Detached  
1936 In Full Payment of Account as Stated Below:

Sept. 10 Trustees' compensation

1,500 00

[Stamped]: Paid

Case No. 3259-PH. Dunbar vs. U. S. A. Plfs. Exhibit #4 Date Nov. 21, 1944 in evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. J. M. Horn, Deputy Clerk [66]

#5

Case No. 3259-PH

Dunbar vs. USA

Pls. EXHIBIT 5

Date NOV 21 1944 No. 5 IDENTIFICATION

Date NOV 21 1944 No. 5 IN EVIDENCE

Clerk, U. S. District Court, Sou. Dist. of Calif.

*[Signature]*

Deputy Clerk

U. S. DEPARTMENT OF REVENUE

ANNUAL RETURN OF EXCISE TAX ON EMPLOYERS OF EIGHT OR MORE INDIVIDUALS  
UNDER TITLE IX OF THE SOCIAL SECURITY ACT

NOV - 1944

FOR CALENDAR YEAR 1936

NOV - 1944

FILE THIS RETURN WITH THE COLLECTOR OF INTERNAL REVENUE FOR YOUR DISTRICT NOT LATER THAN JANUARY 31, 1937

READ INSTRUCTIONS CAREFULLY

Collector's receipt stamp	PRINT NAME AND ADDRESS	Do not write in this space
<i>original</i>		Number
		Amount Paid, \$
		RECEIVED NOV - 9 1944 COLLECTOR OF INTERNAL REVENUE LOS ANGELES, CALIF.

of business in detail (Instruction 4)

( ) form of organization ☐ Corporation; ☐ Partnership; ☐ Individual; ☐ Estate or trust.

Computation proved

Total wages paid or payable for the calendar year. (See instructions on reverse side)

Total wages paid or payable for—

(a) Services performed outside the United States

(b) Agricultural labor

(c) Domestic service

(d) Service of an officer or member of the crew of a vessel in the waters of the United States

(e) Family employment

Total wages subject to tax (Item 1 minus Item 2)

Tax (1% of Item 3)

Credit for contributions actually paid into State unemployment insurance on reverse side under Schedule B before entering tax item

Balance of tax (Item 4 minus Item 5)

*RECEIVED*  
*ET*  
*JAN 10 1945*  
*ACCOUNTS AND COLLECTIONS UNIT*

Feb 27 1945  
Oct 2 1944

AFFIDAVIT (See Instruction No. 5)

I/we swear (or affirm) that this return, including any accompanying schedules or statements, is a true, correct, and complete return, made in good faith, for the calendar year stated, pursuant to Title IX of the Social Security Act and Regulations thereunder, and that no portion of the credit claimed in Item 5 above is with respect to a contribution made to any State unemployment insurance plan performed outside the United States as outlined in Instruction 9, or for exempted service as outlined in Instruction 10, nor is any part of such credit with respect to money deducted or to be deducted from the wages of individuals in my our employ.

Signed or acknowledged before—

(Name) (Address) [CORP. SEAL] (Name) (Title) (Name) (Title)

This return was subscribed in front me this 27 day of October, 1944.

(Seal) *Notary Public in and for the State of California*



## SCHEDULE B

NAME OF TAXPAYER	OCCUPATION	MATERIALS AND SUPPLIES WORKS PAID FOR SERVICES (a), (b), (c), AND (d) (SEE INSTRUCTIONS)
------------------	------------	--

credit is claimed in Item 5 of the return for contributions made to any State other than the one in which the home office or principal place of business of the taxpayer.

**Credit allowable.** Taxpayer may credit against the tax the total amount of his contributions for services performed during the year under a State law approved by the Social Security Board; provided, that no credit may be taken for a contribution if a State in which the State has not been duly certified, for the calendar year for which the tax is due, to the Secretary of the Treasury Social Security Board. The total credit allowed to any taxpayer for such contribution shall not in any case exceed 90 per centum of the wages on which credit is applied. The contribution must have been actually paid into the State unemployment fund before the return on which this return is required to be filed.

**Contribution.** "Contribution" means payments required by a State law to be made by an employer into an unemployment fund to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in the State. The contribution must also have been paid with respect to employment within the United States and also with respect to employment not exempted as outlined in Instruction 10.

**Proof of credit.** Credit against the tax for contributions paid into State unemployment funds will be allowed only upon receipt of a certificate of the proper officer of each State (the law of which required contributions to be made) on the form provided for that purpose. Such certificates will be forwarded direct to the Commissioner of Internal Revenue by the State officer and will be attached to the individual return of the employer in due course of time.

The Commissioner may require such other or additional proof as he may deem necessary to establish the right to the credit.

## TOTAL WAGES PAID OR PAYABLE

Every person subject to tax under the Social Security Act shall keep such permanent records as are necessary to establish the amount of remuneration payable to his employees in cash or in a medium other than cash, showing separately, (a) total remuneration payable with respect to services excepted (Instruction 10), (b) total remuneration payable with respect to services performed in the United States (Instruction 9), (c) total remuneration payable with respect to all other services; (2) the amount of contributions paid into the State unemployment fund with respect to services during the calendar year, not including excepted services (Instruction 10), showing separately, (a) payments made and not deducted (or to be deducted) from the remuneration of employees, and also the amount of contributions made and deducted (or to be deducted) from the remuneration of employees, and (3) the information required to be shown on the return of the State unemployment fund with respect to excepted services; (3) the information required to be shown on the return of the State unemployment fund with respect to excepted services.

Records should be maintained in such manner as to permit a comparison or reconciliation of the amounts reported on the return of the State unemployment fund with the deductions allowable on the income-tax return of the employer for the corresponding year.

Records should be kept of the same items.





BELLVIEW OIL SYNDICATEReturn to be Attached to Form 940Annual Return of Excise Tax on  
Employers of 2 or more IndividualsFor the Calendar Years1936 to 1939, inclusive

Amended returns for the above trust have been made necessary by reason of a ruling made by the Bureau of Internal Revenue that the trustees of this trust estate have been determined to be employees of said trust. (See Deputy Commissioner Geo. J. Schoeneman's letter of October 16, 1940, symbols ATC:41AAA:41L32 covering the year 1938 and letter from the same deputy commissioner dated September 24, 1940 bearing symbols ATC:A:AA:41L32, covering the years 1936 and 1937, denying taxpayer's contention that the three trustees, W. E. Morris, Hooper C. Dunbar and C. C. Horton, are employers and not employees of this trust. The additional tax shown on this return results from taxing the amounts paid to these three trustees shown as follows:

	<u>1936</u>	<u>1937</u>	<u>1938</u>	<u>1939</u>
Hooper C. Dunbar	\$16,200.00	\$10,700.00	\$ 4,950.00	\$ 4,200.00
W. E. Morris	13,200.00	7,700.00	3,200.00	1,200.00
C. C. Horton	<u>18,000.00</u>	<u>12,500.00</u>	<u>5,700.00</u>	<u>4,200.00</u>
	<u>47,400.00</u>	<u>30,900.00</u>	<u>13,850.00</u>	<u>9,600.00</u>
Tax Rate	<u>0.1%</u>	<u>0.2%</u>	<u>0.3%</u>	<u>0.3%</u>
Additional Tax	\$ <u>47.40</u>	\$ <u>61.80</u>	\$ <u>41.55</u>	\$ <u>28.80</u>

Taxpayer respectfully requests that the additional tax shown herein be accepted without interest or penalty, by reason of the exigencies indicated above.

B-4

71



# UNITED STATES CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN

 Page 1  
**939**

For corporations having total receipts of not more than \$250,000 and a net income of not more than \$25,000 or no net income (except certain corporations specified in Instruction 2)

**For Calendar Year 1939**

 or fiscal year beginning 1939, and ended 1940

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Section of Graduate  
 (Name)

Richard B. Bely  
 (Print and number)

Los Angeles, California  
 (City) (County) (State)

Kind of business (see Instruction 16):

 File No. 117  
 Serial No. 861064  
 District Los Angeles  
 (Auditor's Name)  
 Cash Checks M. O.  
 First Payment

 MAY 13 1943  
 520204

**1948**

## ADJUSTED NET INCOME COMPUTATION

Item No.	DESCRIPTION	AMOUNT
1.	Gross sales (where inventories are an income-determining factor)	
2.	Less cost of goods sold (from Schedule B-1)	
3.	Gross profit from sales (item 1 minus item 2)	
4.	Gross receipts (where inventories are not an income-determining factor)	
5.	Less cost of operations (from Schedule B-2)	
6.	Gross profit where inventories are not an income-determining factor (item 4 minus 5)	
7.	Interest on loans, notes, mortgages, bonds, bank deposits, etc. (See Instruction 18-4)	
8.	Interest on obligations of the United States (from Schedule A, line 16(a) (4). (See Instruction 18-2))	
9.	Rents (See Instruction 19)	
10.	Royalties (See Instruction 20)	
11.	(a) Capital gain (or loss) (from Schedule C). (If a net loss, do not enter over \$2,000) (b) Gain or loss from sale or exchange of property other than capital assets (from Schedule D)	
12.	Dividends (from Schedule E)	
13.	Other income (state nature of income)	
14.	<b>Total income in items 3, 6, and 13, inclusive</b>	<b>344,761.21</b>
<b>DEDUCTIONS</b>		
15.	Compensation of officers (from Schedule F)	
16.	Salaries and wages (not deducted elsewhere)	
17.	Rent (See Instruction 23)	
18.	Repairs (See Instruction 24)	
19.	Bad debts (from Schedule G)	
20.	Interest (See Instruction 26)	
21.	Taxes (from Schedule H). (Do not include Federal excess-profits tax)	
22.	Contributions or gifts paid (from Schedule I)	
23.	Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule, see Instruction 29)	
24.	Depreciation (from Schedule J)	
25.	Depletion of mines, oil and gas wells, timber, etc. (Submit schedule, see Instruction 31)	
26.	Other deductions authorized by law (from Schedule K)	
27.	<b>Total deductions in items 15 to 26, inclusive</b>	<b>9,600.00</b>
28.	<b>Net income for excess-profit tax computation (item 14 minus item 27)</b>	<b>335,161.21</b>
29.	Less: Federal excess-profits tax (See Instruction 33)	
30.	<b>Net income (item 28 minus item 29)</b>	
31.	Less: Interest on obligations of the United States (item 8, above)	
32.	<b>Adjusted net income (item 30 minus item 31)</b>	<b>335,161.21</b>

## EXCESS-PROFITS TAX COMPUTATION. (See Instruction 34)

Column 1	Column 2 Rate	Column 3 Amount of Tax
33. Net income for excess-profit tax computation (item 28, above)		
34. Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1939 (or for year ended June 30, 1940, if your income tax fiscal year began in 1939 and ended on or after July 31, 1940)		
35. 10 percent of item 34		
36. Dividends received credit (85 percent of net 2, Schedule 1, but not in excess of 85 percent of item 32, above)		
37. Balance subject to excess-profit tax (item 33 minus total of items 35 and 36)		
38. Amount taxable at 6 percent (5 percent of item 34, but not more than item 37, and tax	6%	
39. Balance taxable at 12 percent (item 37 minus item 38, col. 1), and tax	12%	
40. <b>Total excess-profits tax (total of item 38, col. 2, and item 39, col. 3)</b>		<b>0</b>

## INCOME TAX COMPUTATION

CORPORATIONS WITH NET INCOME OF NOT MORE THAN \$25,000. (See Instruction 35)		
41. Adjusted net income (item 32, above)		
42. Dividends received credit (85% of net 2, Schedule 1, but not in excess of 85% of item 41, above)		
43. Balance subject to income tax (item 41 minus item 42)		
44. Portion of item 43 (not in excess of \$5,000); and tax at 12 1/2 percent	12 1/2%	
45. Portion of item 43 (in excess of \$5,000 and not in excess of \$20,000); and tax at 14%	14%	
46. Portion of item 43 (in excess of \$20,000); and tax at 16 percent	16%	
47. <b>Total income tax (total tax in col. 3 of items 44, 45, and 46)</b>		
48. Less: Credit for income taxes paid to foreign countries (See Instruction 36)		
49. Balance of income tax (item 47 minus item 48)		
50. Excess-profit tax (item 40, above)		
51. <b>Total tax due (item 49 plus item 50)</b>		<b>0</b>

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (this will be assessed if duplicate copy is not filed).

 NO 3759-97-1  
 Division of Taxation  
 U. S. EXHIBIT  
 NEW YORK  
 MAY 21 1944  
 U. S. District Court, Southern District of New York  
 Deputy Clerk









Schedule A

BLANCE SHEETS. (See Instruction 14)

## ASSETS

1. Cash
2. Notes and accounts receivable  
Less reserve for bad debts
3. Inventories:  
(a) Raw materials  
(b) Work in process  
(c) Finished goods  
(d) Supplies
4. Investments (Government obligations:  
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions  
(b) Obligations of the United States  
(c) Obligations of instrumentalities of the United States
5. Other investments (itemize)
6. Capital assets  
(a) Depreciable assets (itemize)  
Total depreciable assets  
Less reserve for depreciation  
(b) Depletable assets  
Less reserve for depletion  
(c) Land

7. Other assets (itemize)

8. Total Assets

## LIABILITIES

9. Accounts payable
10. Bonds, notes, and mortgages payable:  
(a) With original maturity of less than 1 year  
(b) With original maturity of 1 year or more
11. Accrued expenses (itemize)
12. Other liabilities (itemize)
13. Surplus reserves (itemize)
14. Capital stock:  
(a) Preferred stock  
(b) Common stock
15. Paid-in or capital surplus
16. Earned surplus and undivided profits
17. Total liabilities

## QUESTIONS

1. Business classification (See Instruction 14)

If engaged in more than one of the business classifications listed in Instruction 14, state on the two lines above the two businesses accounting for the greater part of the total receipts, and the approximate percentage accounted for by each of the two businesses. If engaged in retail trade, also indicate the number of stores as of the end of the taxable year.

2. Date of incorporation

3. State or country

4. State collector's office where your return for the preceding year was filed

5. The corporation's books are in care of

6. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code?

7. Is this a consolidated return of railroad corporations?

8. If so, procure from the collector of internal revenue for your district Form 831, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of the return.

9. Was the income of this corporation included in a consolidated return for any prior year?

10. Was the corporation at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign?

11. If the answer is "yes," attach separate schedule showing: (1) Name and address (2) percentage of stock owned; (3) date stock was acquired; and (4) tax collector's office in which the income tax return of such corporation was filed.

12. Did the corporation make a return of information for 1939, and 1939 to the calendar year 1939 (see Instruction 10)?

13. Did the corporation at any time during the taxable year own, lease, or indirectly own stock of a foreign corporation? If "yes," attach schedule as required by Instruction 10.

## AFFIDAVIT (See Instruction 7)

We, the undersigned, president or vice president, or other principal officer, agent, or authorized representative, of the corporation for which this return is made, being severally duly sworn, depose and say that the information respecting the corporation's income, profits, and losses, for the taxable year stated, furnished to the Internal Revenue Code, as amended, and the regulations thereunder, is true and correct.

Subscribed and sworn to before me this day of 1940.

Notary Public in and for the State of California.

## AFFIDAVIT (See Instruction 7)

I do swear (or affirm) that I so prepared this return for the taxable year stated, and that the information respecting the corporation's income, profits, and losses, for the taxable year stated, furnished to the Internal Revenue Code, as amended, and the regulations thereunder, is true and correct.

Subscribed and sworn to before me this day of 1940.

Notary Public in and for the State of California.



[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on November 21, 1944, and was tried before the above-entitled Court without a jury (a jury having been waived by stipulation of the parties), Arthur McGregor and Charles J. Higson, Esqs., appearing for the plaintiffs, and Eugene Harpole, Esq., Special Attorney, Bureau of Internal Revenue, appearing for the defendant; and after considering the evidence, both oral and documentary, and arguments of counsel which were submitted to the Court for decision, the Court, having determined that the plaintiff is entitled to judgment and ordered that findings and judgment be entered accordingly, now makes the following:

### Findings of Fact

#### I.

Plaintiffs, Hooper C. Dunbar, Gordon B. Morris and Craig C. Horton, are the trustees of Bell View Oil Syndicate, a trust organized under a written declaration of trust, dated January 20, 1922, as amended by written declaration, [78] dated September 10, 1925. All of said trustees are citizens of the United States and residents of and domiciled in the County of Los Angeles, State of California, within the Sixth Internal Revenue Collection District of the State of California.

#### II.

Within the time required by law, plaintiffs filed under the name of Bell View Oil Syndicate returns (Treasury Form 940) under Title IX of the Social Security Act

for the years 1936, 1937, 1938 and 1939, and paid the tax as shown thereon. These returns did not include the amounts received as compensation by the trustees. The Commissioner of Internal Revenue thereupon ruled that said trustees were employees whose remunerations were subject to the tax imposed by Title IX of the Social Security Act, and asserted deficiencies in taxes for these years. Plaintiffs thereupon filed amended returns for each of the years 1936, 1937, 1938 and 1939 including the remunerations of the trustees and paid additional taxes to the Collector of Internal Revenue in the amount of \$179.55, of which sum the amount of \$150.75 was paid on November 9, 1940 and the amount of \$28.80 was paid on November 19, 1940. Plaintiffs paid interest and penalties thereon in the amount of \$24.86, of which sum the amount of \$23.52 was paid on December 16, 1940 and the amount of \$1.34 was paid on February 11, 1941.

### III.

On September 22, 1942, plaintiffs filed with the aforesaid Collector of Internal Revenue claims for the refunding of the aforesaid taxes of \$179.55, together with interest and penalties of \$24.86 on the ground that the said trustees were not employees and therefore their remunerations were not subject to the tax imposed by Title IX of said Act. These claims were rejected by the Commissioner of Internal Revenue in a letter dated July 12, 1943, whereupon plaintiffs instituted this suit, to recover the alleged overpayment of taxes, interest and penalties, on October 27, 1943.

#### IV.

On January 20, 1922, pursuant to the declaration of trust under which the trust designated "Bell View Oil Syndicate" was created, one H. W. [79] McFarlane transferred Lot No. 5, Block 82, in Santa Fe Springs, California, to five named trustees. Plaintiffs during the years 1936, 1937, 1938 and 1939 and at the present time were and are the trustees acting under said declaration. The declaration of trust directs the trustees to drill a well upon the aforesaid lot in search of oil. Beneficial interests in the trust are divided into fifty thousand units of a par value of \$10.00 each. The trustees execute the powers and perform the duties conferred upon and required of them by said declaration.

#### V.

The important terms of the declaration of trust are as follows: The instrument gives the trustees exclusive management and control of the trust estate with power to make contracts and conveyances relating to the trust estate, to compromise claims, to hold legal title to the trust estate, to employ counsel and to develop and operate oil properties. The remaining trustees are given power to fill any vacancies occasioned by the death or resignation or refusal to act of any trustee. The trustees have the right to elect from among their number a president and vice-president, and a treasurer and secretary, as may be expedient and necessary for the conduct of their business. They may employ and remove such officers, agents and employees as they deem necessary. No personal lia-

bility is to attach to the trustees or beneficial unitholders individually. The trustees are given power to fix their own remuneration, provided that such remuneration and other office and overhead expenses are not to exceed ten per cent of the gross income of the trust. The trustees shall hold office during the lifetime of this trust. No provision is made for removal of any trustee. They are subject to no control in the management of the trust from the unitholders. The trustees are to call annual meetings of the holders of beneficial interests presenting at that time a report of receipts and disbursements made during the year. The trustees may, with the consent of the holders of two-thirds of the outstanding units of the trust estate, alter or amend the trust agreement or terminate the trust. The trustees have no power to bind unitholders personally.

The trustees, acting as such, make all conveyances and contracts in their individual names as trustees for said trust estate. They acted at all [80] times as principals and as owners of the trust estate. They were not subject to direction or control by any other person or persons and in performing their duties under the trust instrument they did not act as the agents or employees for any person or persons. The trustees did elect officers, but never assigned any duties to such officers, and no salary or remuneration was ever paid to any officer as such.

## VI.

The Commissioner of Internal Revenue overstated plaintiffs' tax liability by reason of his inclusion of the



remuneration of plaintiff-trustees as employees under Title IX of the Social Security Act, as a result of which plaintiffs overpaid said taxes in the amount of \$179.55, together with interest and penalties in the amount of \$24.86, all of which is refundable to plaintiffs, together with interest thereon as provided by law from the dates of payment thereof. [81]

### Conclusions of Law

The foregoing facts considered, the Court concludes as a matter of law as follows:

#### I.

That plaintiffs, Hooper C. Dunbar, Gordon B. Morris, and Craig C. Horton, are the duly appointed trustees of Bell View Oil Syndicate, a trust, and are the proper parties, plaintiff.

#### II.

That this Court has jurisdiction to hear and determine this proceeding.

#### III.

That said trustees under the declaration of trust were not employees nor individuals in the employ of another within the meaning of Title IX of the Social Security Act. That they were rather principals and employers. That the remunerations of said trustees are therefore not subject to tax within the purview of said Title IX (42 U. S. C. A. Section 1101) of the Social Security Act.

#### IV.

That said trustees were not officers of a corporation, nor were they substantially similar to officers of a cor-

poration as that term is used in said Act (Title 26 U. S. C. A. Section 1607 (i)).

V.

That the Commissioner of Internal Revenue erred in determining that said trustees on behalf of the trust were taxable under said Title IV upon the remunerations paid to said trustees.

VI.

That plaintiffs overpaid Social Security taxes in the amount of \$179.55, and are entitled to a judgment against the defendant in this sum, together with interest as provided by law on \$150.75 from November 9, 1940, and on \$28.80 from November 19, 1940; that plaintiffs also overpaid interest and penalties upon the above tax in the amount of \$24.86, together with interest as provided by law on \$23.52 from December 16, 1940 and on \$1.34 from February 11, 1941. [82]

Dated this 1st day of December, 1944.

PEIRSON M. HALL

United States District Judge

Approved as to form

CHAS. H. CARR,

United States Attorney

By EUGENE HARPOLE

Attorney for Defendant

[Endorsed]: Filed Dec. 1, 1944. [83]

United States District Court  
Southern District of California

Central Division

Civil Action No. 3259-PH

HOOPER C. DUNBAR, GORDON B. MORRIS, and  
CRAIG C. HORTON, Trustees of Bell View Oil Syn-  
dicate, a Trust,

Plaintiffs,

**vs.**

UNITED STATES OF AMERICA,

Defendant.

### JUDGMENT

This cause having come on regularly for trial on November 21, 1944, before the Court sitting without a jury, a jury having been expressly waived by the parties. Arthur McGregor and Charles J. Higson, Esqs., appearing as attorneys for plaintiffs and Eugene Harpole, Esq., Special Attorney, Bureau of Internal Revenue, appearing for the defendant, and evidence, both oral and documentary having been introduced by the respective parties and received, and this cause having been submitted to the Court for decision, and the Court having made and filed its findings of fact and conclusions of law and ordered that judgment be entered in favor of the plaintiffs in accordance therewith;

Now, Therefore, it is the judgment of the Court that plaintiffs do have and recover from defendant the following sums, together with interest thereon from the dates

set out below to the date hereof at the rate of six per cent (6%) per annum: [84]

<u>Amount to be Recovered</u>	<u>With interest at 6% per annum from</u>	<u>Interest to be Recovered</u>
\$150.75	November 9, 1940	\$36.68
\$ 28.80	November 19, 1940	\$ 6.95
\$ 23.52	December 16, 1940	\$ 5.57
\$ 1.34	February 11, 1941	\$ .30
<hr/> \$204.41		<hr/> \$49.50

amounting in the aggregate to the sum of Two Hundred and Fifty-three Dollars and Ninety-one Cents (\$253.91), which shall bear interest according to law.

Dated this 1st day of December, 1944.

PEIRSON M. HALL

United States District Judge

Approved as to form

CHAS. H. CARR,

United States Attorney,

By EUGENE HARPOLE

Attorney for Defendant

Judgment entered Dec. 1, 1944. Docketed Dec. 1, 1944. C. O. Book 29, page 355. Edmund L. Smith, Clerk; by J. M. Horn, Deputy.

[Endorsed]: Filed Dec. 1, 1944. [85]

United States District Court  
Southern District of California

Central Division

Civil Action No. 3259-PH

HOOPER C. DUNBAR, GORDON B. MORRIS, and  
CRAIG C. HORTON, Trustees of Bell View Oil Syn-  
dicate, a Trust,

Plaintiffs,

**vs.**

UNITED STATES OF AMERICA,

Defendant.

AMENDED JUDGMENT

This cause having come on regularly for trial on November 21, 1944, before the Court sitting without a jury, a jury having been expressly waived by the parties, Arthur McGregor and Charles J. Higson, Esqs., appearing as attorneys for plaintiffs and Eugene Harpole, Esq., Special Attorney, Bureau of Internal Revenue, appearing for the defendant, and evidence, both oral and documentary having been introduced by the respective parties and received, and the cause having been submitted to the Court for decision, and the Court having made and filed its findings of fact and conclusions of law and ordered that judgment be entered in favor of the plaintiffs in accordance therewith;

Now, Therefore, it is the judgment of the Court that plaintiffs do have and recover from defendant the following overpayments, together with interest thereon at the

rate of six per cent (6%) per annum, from the dates set out below to a date preceding the date of the refund check by not more than thirty (30) days: [86]

Amount to be Refunded:

Year	Date of Payment	Tax	Interest	Penalty
1936	11- 9-40	\$47.40		
	12-16-40		\$10.03	
	12-16-40		.18	\$2.87
1937	11- 9-40	61.80		
	12-16-40		.20	3.59
1938	11- 9-40	41.55		
	12-16-40		4.31	
	12-16-40		.05	2.29
1939	11-19-40	28.80		
	2-11-41		1.34	
		<hr/>	<hr/>	<hr/>
		\$179.55	\$16.11	\$8.75

Dated this 18 day of December, 1944.

PEIRSON M. HALL

United States District Judge

Approved as to form:

CHAS. H. CARR,

United States Attorney,

By E. H. MITCHELL

Attorney for Defendant

Judgment entered Dec. 18, 1944. Docketed Dec. 18, 1944. C. O. Book 29, page 547. Edmund L. Smith, Clerk; by J. M. Horn, Deputy. [87]



[Title of District Court and Cause.]

STIPULATION FOR AMENDED JUDGMENT

It Is Hereby Stipulated by and between the above entitled parties, by their respective attorneys, that the judgment entered in the above entitled cause on December 1, 1944 be amended in the manner and form of the Amended Judgment, attached hereto, in order to correctly state the method of interest computation.

Dated this 18th day of December, 1944.

ARTHUR McGREGOR

Attorney for Plaintiffs

CHARLES H. CARR,

United States District Attorney,

EDWARD H. MITCHELL,

Assistant United States District Attorney

By E. H. MITCHELL

Attorneys for Defendant

[Endorsed]: Filed Dec. 18, 1944. [88]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To: Hooper C. Dunbar, Gordon B. Morris and Craig C. Horton, Trustees of Bell View Oil Syndicate, a Trust and Mackay, McGregor and Reynolds, their attorneys:

Notice Is Hereby Given that the United States of America, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final Judgment entered on the 29th day of November, 1944, and as amended on the 18th day of December, 1944.

Dated: February 27th, 1945.

CHARLES H. CARR

United States Attorney

E. H. MITCHELL and

GEORGE M. BRYANT

Assistant U. S. Attorneys

EUGENE HARPOLE,

Special Attorney Bureau of Internal Revenue

E. H. MITCHELL

Attorneys for Defendant-Appellant

[Endorsed]: Filed & mailed copy to Mackay, McGregor and Reynolds, attys. for plf., Feb. 27, 1945. [89]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

The defendant-appellant, United States of America, designates the following points upon which it intends to rely on appeal:

1. The District Court erred in not determining that the Bell View Oil Syndicate was at all times material a corporation for federal employment tax purposes.
2. The District Court erred in determining that the trustees of the Bell View Oil Syndicate were principals.
3. The District Court erred in determining that the trustees of the Bell View Oil Syndicate were not employees thereof.

Dated this 14th day of March, 1945.

CHARLES H. CARR,  
United States Attorney

E. H. MITCHELL,  
Asst. United States Attorney

GEORGE M. BRYANT,  
Asst. United States Attorney

EUGENE HARPOLE,  
Special Attorney Bureau of Internal Revenue  
By EUGENE HARPOLE  
Attorneys for defendant-appellant.

Received copy of the within this 16 day of March, 1945.  
Mackay, McGregor & Reynolds, attorney for plaintiffs-appellees. A. McG.

[Endorsed]: Filed Mar. 20, 1945. [90]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF CONTENTS  
OF RECORD ON APPEAL.

To the Clerk of the District Court of the United States  
for the Southern District of California, Central  
Division:

The appellant, the defendant in the above entitled action, hereby designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled action.

1. The Complaint.
2. The Answer.
3. Stipulation of Facts with Exhibits attached.
4. Statement of Testimony.
5. Defendant's Exhibit A, consisting of the 1939, and excess profits tax return of Bell View Oil Syndicate.
6. Findings of Fact and Conclusions of Law.
7. Judgment entered November 29, 1944.
8. Amended Judgment entered on December 18, 1944. [91]
9. Defendant's Notice of Appeal with date of filing.
10. Appellant's Statement of Points upon which defendant, appellant, intends to rely on appeal.
11. Defendant-appellant's designation of contents of record on appeal.
12. Clerk's Certificate.

Dated: this 14th day of March, 1945.

CHARLES H. CARR—E. H.  
United States Attorney

E. H. MITCHELL—E. H.  
Asst. United States Attorney

GEORGE M. BRYANT—E. H.  
Asst. United States Attorney

EUGENE HARPOLE

Special Attorney, Bureau of Internal Revenue  
Attorneys for defendant-appellant.

Received copy of the within this 16 day of March, 1945. Mackay, McGregor and Reynolds. A. McG., attorney for plaintiffs-appellees.

[Endorsed]: Filed Mar. 20, 1945. [92]

---

[Title of District Court and Cause.]

APPELLEES' AMENDED DESIGNATION OF ADDITIONAL PARTS OF RECORD ON APPEAL AND STIPULATION AS TO CONTENTS OF A PORTION OF THE RECORD ON APPEAL.

To the Clerk of the District Court of the United States for the Southern District of California, Central Division:

The appellees, the plaintiffs in the above entitled action, hereby designate additional parts of the record, proceedings and evidence to be contained in the record on appeal in the above entitled action.

1. Plaintiffs' Exhibit 1, consisting of letter from Treasury Department, dated July 12, 1943, addressed to Bell View Oil Syndicate and signed by Guy T. Helvering, Commissioner, by George Schoeneman, Deputy Commissioner.

2. Plaintiffs' Exhibit 4, consisting of cancelled check No. 16442 for \$1,500.00, payable to C. C. Horton of the Bell View Oil Syndicate and drawn on Citizens National Trust and Savings Bank, Los Angeles, California.

3. Part of plaintiffs' Exhibit 5, consisting of certified copy of "Amended" Annual Return, Treasury Form 940, of Excise Tax on Employers of Eight or More Individuals Under Title IX of the Social Security Act with rider [93] attached for the year 1936 only. The pages of said certified copy are numbered B-1, B-2, B-3 and B-4.

4. This amended designation and stipulation.

5. All orders extending time to docket cause on appeal.

It is hereby stipulated and agreed by and between counsel for the plaintiffs-appellees and the defendant-appellant that amended annual returns on Treasury Form 940 of excise tax on employers of eight or more individuals under Title IX of the Social Security Act were filed by plaintiffs for the years 1937, 1938 and 1939, that a rider was attached to each return identical to that attached to the return filed for 1936 by plaintiffs and that the returns were similar in form and material to said return for 1936, which is designated herein as part of plaintiffs'



Exhibit 5, consisting of certified copy of "Amended" Annual Return Treasury Form 940.

Dated this 23rd day of April, 1945.

MACKAY, MCGREGOR and  
REYNOLDS

Attorneys for Plaintiffs-Appellees  
CHARLES H. CARR

United States Attorney  
E. H. MITCHELL and  
GEORGE M. BRYANT

Assistant U. S. Attorneys  
EUGENE HARPOLE,  
Special Attorney Bureau of Internal Revenue  
By EUGENE HARPOLE  
Attorneys for Defendant-Appellant

[Endorsed]: Filed Apr. 23, 1945. [94]

---

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET CAUSE  
ON APPEAL.

Good cause appearing therefor, It Is Hereby Ordered that the time within which to file the record and docket the above entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby, is extended to and including the 28th day of May, 1945.

Dated: this 5 day of April, 1945.

PEIRSON M. HALL  
United States District Judge

[Endorsed]: Filed Apr. 5, 1945. [95]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 95 inclusive contain full, true and correct copies of Complaint for Recovery of Taxes Paid; Answer; Stipulation; Statement of Testimony; Plaintiff's Exhibits 1, 4 and a portion of No. 5; Defendant's Exhibit A; Findings of Fact and Conclusions of Law; Judgment; Amended Judgment; Notice of Appeal; Statement of Points Upon Which Appellant Intends to Rely on Appeal; Appellant's Designation of Contents of Record on Appeal; Appellees' Amended Designation of Additional Parts of Record on Appeal and Stipulation as to Contents of a Portion of the Record on Appeal and Order Extending Time to Docket Cause on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 27<sup>th</sup> day of April, 1945.

EDMUND L. SMITH.

(Seal)

Clerk

By Theodore Hocke,  
Chief Deputy Clerk.

[Endorsed]: No. 11049. United States Circuit Court of Appeals for the Ninth Circuit. United States of Amer-

ica, Appellant, vs. Hooper C. Dunbar, Gordon B. Morris and Craig C. Horton, Trustees of Bell View Oil Syndicate, a trust, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 30, 1945.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for  
the Ninth Circuit.

---

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11049

UNITED STATES OF AMERICA,

Appellant.

-v-

HOOPER C. DUNBAR, GORDON B. MORRIS, and  
CRAIG C. HORTON, Trustees of Bell View Oil Syndicate, a Trust,

Appellees.

STATEMENT OF POINTS RELIED UPON ON  
APPEAL

The appellant states that it intends to rely in its appeal from the Judgment of the United States District Court dated November 29, 1944, and the Amended Judgment dated December 18, 1944, upon the points mentioned in

the statement of points relied upon by appellant, found at page 90 of the record of said appeal.

Dated: this 26th day of April, 1945.

CHARLES H. CARR—E. H.  
United States Attorney

E. H. MITCHELL—E. H.  
Asst. United States Attorney

GEORGE M. BRYANT—E. H.  
Asst. United States Attorney

EUGENE HARPOLE  
Special Attorney Bureau of Internal Revenue.  
Attorneys for Appellant.

Receipt of copy of the above is hereby acknowledged.  
April 27, 1945. Mackay, McGregor and Reynolds, by  
Dorothy Erben, attorneys for appellees.

[Endorsed]: Filed Apr. 30, 1945. Paul P. O'Brien,  
Clerk.